IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-414

CAPE PUBLICATIONS, INC. and
BUDDY BAKER and DUKE NEWCOME, *Petitioners*

v.

DONALD F. ADAMS, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE FOURTH DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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Petitioners respectfully pray that a writ of certiorari issue to review the judgment of the Fourth District Court of Appeal of the State of Florida entered on August 27, 1976.

OPINIONS BELOW

The Circuit Court of Brevard County, Florida, rendered no opinion. The opinion of the Florida Fourth District Court of Appeal, reported at 336 So.2d 1197 (1976), is set forth in Appendix A.

JURISDICTION

The opinion of the Florida Fourth District Court of Appeal was entered on August 27, 1976. Petitioners' petition for rehearing by the Fourth District Court of Appeal was denied on October 1, 1976. The Supreme Court of Florida denied review of said decision of the Florida Fourth District Court of Appeal on June 24, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Whether, under the facts of this case, the publication by a newspaper of corroborated allegations constitutes actual malice when some, but not all, of the newspaper's sources deny at trial the published allegations.

2. Whether, in a libel action brought by a public official, the trial judge, prior to submitting the case to the jury, must make a preliminary finding of actual malice on a pending motion for directed verdict.

3. Whether the First and Fourteenth Amendments permit the award of punitive damages in a libel action brought by a public official.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides, in part:

> "Congress shall make no law . . . abridging the freedom of speech, or of the press. . . ."

The Fourteenth Amendment to the United States Constitution provides:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE CASE

Duke Newcome, an experienced newspaper reporter, was Vero Beach bureau chief of a Brevard County newspaper known as TODAY, for a number of years. He was well trained in investigative writing and was a reporter in a Pulitizer prize-winning newspaper investigation at Panama City. Bernard St. Pierre, a Vero Beach builder, Sheriff Detective Joseph Sardella, a deputy sheriff of Indian River County, and Newcome were friends. The TODAY bureau was in a small building in Vero Beach, together with the law office of Attorney Robert Stone, now State Attorney of the Nineteenth Circuit of Florida.

Plaintiff Donald Adams was and is the Building Official of Vero Beach, County Seat of Indian River County, and in March, 1972, he issued stop work orders suspending construction by St. Pierre of a house on Dahlia Lane in Vero Beach. Questions were raised by St. Pierre as to the propriety of Adams' rulings, and the matter took on a newsworthy character, whereupon Newcome proceeded to publish stories and photographs about the Adams-St. Pierre Dahlia Lane controversy. Misdemeanor charges were filed by Adams against St. Pierre, alleging building code violations in construction of the Dahlia Lane property. St. Pierre engaged Stone as his attorney, and St. Pierre pleaded not guilty to these charges. In attempting to settle this

controversy, complications arose and Adams demanded, as a condition to continuing construction, that St. Pierre plead guilty to at least one of the charges against him. At this point, the matter was brought to the attention of Deputy Sardella who, seeing grounds for a possible charge of extortion against Adams, on April 7, 1972, taped telephone conversations with Adams, wherein Adams restated his demand for the guilty plea.

St. Pierre refused to plead guilty and on April 11 filed a mandamus suit to compel Adams to permit St. Pierre to continue building the house on Dahlia Lane.

On May 30, 1972, the misdemeanor charges were tried and a jury found St. Pierre not guilty of all charges. A few days later, on June 8, in the circuit court of Indian River County, the mandamus case was tried, the tapes were introduced into evidence, and the circuit court announced its decision to issue a writ of mandamus requiring Adams to permit resumption of construction of the house on Dahlia Lane. News of these events were published in TODAY.

During this same period, after the news articles and photographs about St. Pierre and the Dahlia Lane house were published beginning in March, 1972, various sympathetic contractors and subcontractors in the Vero Beach area began to call St. Pierre and related to him instances of unusual difficulties they also had had, and were having, with Adams. St. Pierre reported these calls to Sardella and Newcome, and Sardella began a full investigation of Adams for the purpose of determining whether he had committed any crimes. He visited contractors and subcontractors, both alone and together with St. Pierre.

Newcome immediately began investigating the matter on his own, from the viewpoint of uncovering a possible news story. He acquired Sardella's information, either directly or through St. Pierre. A great many instances of apparent favoritism, unfairness and arbitrariness in Adams' performance of his duties as Building Official came to light. One of these items, learned first by Sardella and St. Pierre, and later by Newcome from one Donald Wilcox, concerned difficulties Wilcox was having with Adams in the construction of Village Spires, a large condominium in Vero Beach. Adams had disapproved approximately $30,000.00 worth of doors which he had previously approved in the architect's plans. These doors had already been purchased, prepared and warehoused by Wilcox's construction company. Adams' stated reason for rejection of the doors was based on the fire-rated quality of the doors.

Wilcox was project superintendent for the corporation which was building the Village Spires, and his foreman, or job supervisor, was one Arthur Bernard. In discussing with Wilcox Adams' rejection of the doors, Bernard reported that Adams had indicated to him that payment of $1,000.00 to Adams would clear the matter up. St. Pierre, upon learning that Wilcox might know something concerning misconduct on Adams' part, arranged a meeting with Sardella and Wilcox. At that meeting, Wilcox informed them of Bernard's report that Adams had solicited a $1,000.00 payment. He also stated that Adams had purchased some discarded mirrors from Wilcox's company, and, having paid for the mirrors by personal check, he returned the next day seeking a refund of the purchase price in cash, intending to keep the mirrors. This in-

formation was then reported to Newcome by Sardella or St. Pierre.

Subsequently, Newcome met with Wilcox, who confirmed Bernard's reports as to the $1,000.00 solicitation and the mirrors incident. At about the same time, Sardella and Newcome learned that Robert DiBassie, a local subcontractor, had also called St. Pierre and might have additional information. Sardella and Newcome then met with DiBassie, who expressed his disgust with the Building Department of Vero Beach, using strong language to the effect that it was a "rotten G. D. business", and insinuating impropriety on Adams' part.

Roland Miller was mayor of a local beach community, Indian River Shores, and in a prior conversation with Sardella and in a later conversation with Newcome, discussed attempts by Adams to get extra pay for extra work required in that small community, and characterized these attempts as "shakedown" and "payola". He also mentioned this to others.

During the months of April and May, 1972, Newcome interviewed several other contractors and subcontractors concerning their dealings with the Vero Beach Building Department, and prepared a number of stories based on those interviews. He also prepared articles concerning the Wilcox, DiBassie and Miller allegations.

These articles were all reviewed by the editorial staff of TODAY and by counsel, and were rewritten and in some areas were reinvestigated. Newcome returned to interview Arthur Bernard, who, in a very short statement, denied reporting to Wilcox any attempted bribe.

Sardella and St. Pierre, however, assured Newcome that the Wilcox statements had been made.

All of these matters were reported to editorial staff, and passed on by counsel, and on June 11, 1972, the articles in revised form were published, including brief statements of denial by Adams and Bernard. See Appendix C.

Following publication, Wilcox, DiBassie and Miller denied the statements attributed to them by the articles. Plaintiff then filed this libel suit based on the Wilcox, DiBassie, and Miller allegations of improprieties on Adams' part.

The complaint for libel was filed August 3, 1972 by Adams against Gannett Florida Corporation, Newcome, and Buddy Baker, managing editor of TODAY. Subsequently, the name of the corporation was changed from Gannett Florida Corporation to Cape Publications, Inc.

The defendants, by counsel, filed a motion to dismiss August 30, 1972. This was followed by numerous discovery proceedings, including depositions, interrogatories, and motions to produce.

On February 15, 1973, plaintiff filed his amended complaint, adding as defendants Joseph Sardella, Bernard C. St. Pierre and Robert E. Stone, in an additional count, Count II, alleging conspiracy to libel by printing the same publications alleged in the original complaint, which became Count I. Defendants thereupon filed motions to dismiss the amended complaint and on April 26, 1973, after hearing, the court entered its order denying all motions to dismiss. All the defend-

ants filed answers containing affirmative defenses to which the plaintiff replied.

On July 12, 1973 after fifteen depositions had been taken, the defendants Gannet Florida Corporation, Buddy Baker and Duke Newcome filed their motion for summary judgment, and on August 27, 1973, after hearing, said motion was denied, the trial judge stating:

> "... that there may be an inference drawable from the testimony heretofore deposed that would establish a genuine issue of material facts."

Pre-trial was had and jury trial began September 3, 1974 and continued for six days, during which some twenty-five witnesses testified.

Several witnesses testified to an unyielding, unfair and inconsistent application of building rules by Adams, frequently sprinkled with favoritism towards some contractors, and the singling out of others for harsh treatment. Bernard, Wilcox, and DiBassie and Miller, however, denied having made their reported statements critical of Adams. Sardella, St. Pierre and Newcome adhered to their original statements.

Trial testimony as to damages showed that the plaintiff continued in his job and continued socializing with people, playing golf and the like. Previous personal events had caused him to curtail his church and lodge activities long before the publication of the articles in question.

Plaintiff voluntarily dismissed defendant Stone at the end of plaintiff's case. Although there was fundamental identity in the positions of Sardella, St. Pierre and Newcome, the court directed a verdict for all defendants on the conspiracy count of the amended com-

plaint, but refused to direct a verdict for Cape Publications, Baker and Newcome on the libel count. The court then denied motions of the remaining defendants as to punitive damages and their motions for directed verdict under the *New York Times* v. *Sullivan* standard for libeling public officials. These motions were renewed at the close of all the evidence, and the court refused to rule and simply took the motions under advisement, without comment.

After some controversy over instructions, the jury retired to deliberate. The jury returned a verdict of $114,000.00 in compensatory damages against all remaining defendants, and $100,000.00 in punitive damages against Cape Publications, Inc. alone. Final judgment for these amounts was entered September 13, 1974.

On September 19, 1974, these defendants filed a motion to vacate the verdict, to enter judgment in accordance with their motion for directed verdict, and in the alternative for judgment notwithstanding verdict, and to vacate the verdict as to punitive damages and in the alternative for a new trial. On November 15, 1974, the trial judge denied said motions.

Appeal was taken to the District Court of Appeal, Fourth District of Florida, which affirmed with opinion on August 26, 1976. Rehearing was denied October 1, 1976.

Petition for Certiorari was filed in the Supreme Court of Florida on October 15, 1976. Certiorari was denied by that Court on June 24, 1977.

SUMMARY OF ARGUMENT

This case raises very important issues concerning the application at trial of the *New York Times* "actual malice" standard and the appropriateness, under the facts of this case, of an award of $114,000 in compensatory damages, and $100,000 in punitive damages as against the corporate defendant alone, where there was no evidence introduced at trial to show substantial, actual injury to the plaintiff, and where there was no evidence of actual malice on the part of the corporate defendant, Cape Publications, Inc.

In cases subsequent to *New York Times* v. *Sullivan,* 376 U.S. 254 (1964), this Court has set forth the subjective nature of the "actual malice" test, which is keyed to the defendant's state of mind in publishing, rather than to the general impropriety or the degree of nonfeasance involved. See *St. Amant* v. *Thompson,* 390 U.S. 727 (1968); *Garrison* v. *Louisiana,* 379 U.S. 64 (1964). In addition, this Court has established that the requisite proof, that "the defendant in fact entertained serious doubts as to the truth of his publication," *St. Amant, supra* at 731, must be "clear and convincing," *Gertz* v. *Robert Welch, Inc.,* 418 U.S. 323 at 331-332 (1974); *Rosenbloom* v. *Metromedia Inc.,* 403 U.S. 29 at 30 (1971), and exceed a showing of actual malice by a mere preponderance of the evidence.

Nevertheless, the verdict for Respondent below is not based upon evidence which meets this standard. This action was brought on the basis of three primary allegations concerning Respondent's conduct of his duties as Building Official. The publications in question alleged (1) that he attempted to "shake down" a construction foreman for $1,000 in return for Plaintiff's approval of a particular construction project;

(2) that after purchasing $150.00 worth of mirrors from this same contractor, he then coerced one of the contractor's employees to return his $150.00 while he kept the mirrors; and (3) that he attempted to receive from the Mayor of a neighboring city extra money for performing, under contract, building inspections in that city—"money he wasn't entitled to."

At trial, various of the cited sources for the allegations in Petitioners' published articles denied either the truth of the allegations and/or the fact that they made statements to Petitioners corroborating those charges. Nevertheless, competent evidence was introduced by Petitioners to rebut each of those denials.

The only evidence directly probative of Petitioners' state of mind in publishing was a statement by one of plaintiff's witnesses, another local building contractor, that Petitioner Newcome, and two individuals assisting Newcome in the investigation and preparation of the articles, had stated they were "out to get" Respondent. Each of these three individuals denied having made such statements and the testimony of another witness for Petitioners was introduced to effectively impeach the credibility of the local contractor who allegedly overheard this statement. Thus, the fundamental error in the verdict below is that it is based on a welter of conflicting testimonial evidence which by no means constitutes clear and convincing proof of actual malice.

In addition, the evidence does not support the award to Plaintiff of either $114,000 in compensatory damages or $100,000 in punitive damages. Assuming *arguendo* that the evidence below was sufficient for a finding of liability, and assuming that general damages

in the nature of hurt feelings, embarrassment, etc., may be presumed to result from the widespread distribution of a defamatory publication, there nevertheless was no evidence introduced which would reasonably justify an award of $114,000 in actual damages. The Plaintiff suffered nominal monetary injury and retained his job as Building Official. The testimony as to the character of Adams' prior reputation was conflicting at best. Adams himself testified that both prior and subsequent to publication of the articles in question, he had received criticism concerning his work as Building Official. Yet, although there appears to be no basis in the evidence for such an award, the jury found Adams injured to the extent of $114,000!

Finally, in the exercise of its practically uncontrolled discretion in awarding punitive damages, the jury's award of $100,000 in punitive damages, as against Cape Publications, Inc., alone, and not Petitioners Baker and Newcome, reveals an intent to recompense Respondent for his "injury", and to punish those persons involved, without regard to the evidence adduced as to who in fact engaged in wanton and malicious conduct. There was no evidence introduced at trial which was even purported to show wanton, oppressive conduct or malicious intent on the part of any of the editorial or managerial personnel of TODAY.

Therefore, without clear and convincing evidence of actual malice on the employer's part, the punitive award of $100,000 as against Cape Publications, Inc., "makes no sense at all," *Williams* v. *City of New York,* 508 F.2d 356, at 360 (4th Cir. 1974). Moreover, inasmuch as this Court has acknowledged that—although in defamation actions "the interest in protecting [private figures] is . . . greater" than the interest in protecting public figures—States "have no substantial interest in securing for [private figures] awards of money damages far in excess of any actual injury", *Gertz* v. *Welch,* 418 U.S. at 344, 349 (1974), there clearly can be no compelling state interest in awarding to a public figure punitive damages far in excess of actual injury, particularly where self-censorship in reporting on public figures and governmental operations may result.

Thus, not only is the award of punitive damages below unsupported by the evidence; by predicating liability, and the award of substantial "exemplary" damages as against Cape Publications, Inc. alone, on mere denials by reported news sources, the verdict below also significantly and impermissibly impairs Petitioners' First Amendment rights without advancing any compelling or overriding state interest.

ARGUMENT

The Evidence Adduced at Trial Below Does Not Support the Judgment Against Petitioners Under the Actual Malice Test of New York Times v. Sullivan

The fundamental error in the trial proceedings against Petitioners below was the misapplication of the "actual malice" standard of culpability enunciated by this Court in its landmark decision in *New York Times* v. *Sullivan,* 376 U.S. 254 (1964). There, this Court recognized that common law standards of liability in defamation actions posed the "risk of inducing a cautious and restrictive exercise of the constitutionally guaranteed freedoms of speech and press" and that therefore some modification in the law of libel and slander was required. *Gertz* v. *Robert Welch, Inc.,* 418 U.S. 323, 340 (1974). As a means of accomodating the free exercise of First Amendment rights with the legi-

timate state interest in redressing injury to personal reputation, this Court introduced a constitutionally founded, qualified privilege to publish defamatory statements by requiring, as a necessary element of proof in libel actions brought by public officials, that the defamatory falsehood be published with "actual malice." Actual malice was defined as knowledge that the statement was false or reckless disregard of whether it was false or not. *New York Times* v. *Sullivan, supra,* at 279-280.

A definition of actual malice has been offered in numerous subsequent cases involving public officials and, after *Curtis Publishing Co.* v. *Butts,* 388 U.S. 130 (1967), public figures. In *Garrison* v. *Louisiana,* 379 U.S. 64, 79 (1964), Justice Brennan delivered the majority opinion and noted that "[t]he test . . . laid down in *New York Times* is not keyed to ordinary care; defeasance of the privilege is conditioned, not on mere negligence, but on reckless disregard for the truth." What also has been emphasized in cases decided by this Court subsequent to *New York Times* is that the actual malice standard of culpability is a subjective one, narrowly keyed to the defendant's state of mind rather than the general propriety of his conduct in publishing:

> "In *New York Times,* supra, the plaintiff did not satisfy his burden because the record failed to show that the publisher was aware of the likelihood that he was circulating false information. . . . [R]eckless conduct is not measured by whether a reasonably prudent man would have published or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publications."

St. Amant v. *Thompson,* 390 U.S. 727, 731 (1968).

In *Vandenburg* v. *Newsweek, Inc.,* 507 F.2d 1024 (5th Cir. 1975), the Fifth Circuit Court of Appeals stated that proof of actual malice "is not a proposition that can be supported by a formative conclusion that the publisher should have known of the falsity of the statement. Rather, evidence—direct or circumstantial—of the publisher's subjective awareness is required." *Id.* at 1026.

Thus, for a finding of liability sufficient under *New York Times,* the "reckless disregard" must relate to the accuracy of the publication and not the reputational interests of the person defamed. Ill-will, a specific intent to inflict harm, and indifference to the effect of an injurious publication upon the plaintiff do not, in and of themselves, suffice. In *Greenbelt Cooperative Publishing Association* v. *Bresler,* 398 U.S. 6, 10 (1970), this Court held that instructions to the jury which would allow it "to find liability merely on the basis of a combination of falsehood and general hostility . . . was error of constitutional magnitude."

Finally, the evidence adduced to prove actual malice must do so with "convincing clarity." *New York Times* v. *Sullivan, supra,* at 285-286. Stated differently, the subjective state of mind required of the defendant at the time of publication must be shown with "clear and convincing proof." *Gertz* v. *Robert Welch, Inc., supra* at 331-332; *Rosenbloom* v. *Metromedia, Inc.,* 403 U.S. 29, 30 (1971). One state court, focusing on the nature of the evidence required, has stated that "clear and convincing proof" is "strong, positive, free from doubt" and "full, clear and decisive." *Stone* v. *Essex County Newspaper, Inc.,* 330 N.E.2d 161, 175 (Mass., 1975).

In an article from which the actual malice standard was largely taken, Professor McBaine stated the bur-

den required of a plaintiff to show actual malice with convincing clarity:

> "The burden [of persuasion] is not a burden of convincing you that the facts which are asserted are certainly true or that they are almost certainly true, or are true beyond a reasonable doubt. It is, however, greater than a burden of convincing you that the facts are more probably true than false. The burden imposed is to convince you that the facts asserted [i.e., knowledge of probably falsity] are highly probably true, that the probability that they are true or exist is substantially greater than the probability that they are false or do not exist."

McBaine, "Burden of Proof: Degrees of Belief," 32 Cal. L. Rev. 242, 246, 263-63 (1944). See also Morgan, "Instructing the Jury Upon Presumptions and Burden of Proof," 47 Harvard L. Rev. 59, 66 (1933). Thus, any assessment of the sufficiency of the evidence adduced at the trial of Petitioners below must be made in light of the foregoing definitions of what constitutes clear and convincing proof of actual malice.

Turning first to the evidence at trial concerning the basis for the printed allegations that Adams attempted to "shake down" Bernard for $1,000.00, the reporter Newcome testified that he was first told by either Sardella, a deputy sheriff for Indian River County, or St. Pierre, a local builder, that Wilcox, another local builder, had information concerning the attempted bribe solicitation. Appendix B, p. 8a. After hearing this, Newcome discussed it with Wilcox. According to Newcome's testimony, Wilcox stated that he had been told of the attempted shakedown by Bernard himself, who was an employee of Wilcox. App. B, p. 8a. Newcome then interviewed Adams, who denied the allegations, and Bernard, who reluctantly talked with Newcome and denied reporting to Wilcox any attempt by Adams to obtain a bribe. App. B, p. 9a. Following publication, and for the first time, Wilcox denied having made the statements which had been attributed to him in the article. App. B, pp. 10a-12a.

Aside from the question of whose trial testimony is to be believed as to whether or not Wilcox told Sardella, St. Pierre or Newcome that Bernard had previously spoken of a shakedown by Adams, it is clear that Sardella, St. Pierre and Newcome have maintained, both prior and subsequent to the publication, that Wilcox did make such a statement to them. App. B, pp. 9a-12a. Moreover, it is not unlikely to suppose that Bernard and Wilcox—who, in order to continue to do business in the Vero Beach area, would have to submit their construction plans to Adams for his approval—might have an interest in recanting their earlier discussions with Newcome.

When asked at trial whether the denial by Bernard, prior to publication, warranted meetings for the purpose of further verification, Newcome testified:

> "No, I don't think it was up to me to continue meeting. I had statements from Mr. Wilcox that it had occurred. I had facts from Mr. St. Pierre and Mr. Sardella, that he had told the same thing to them on separate occasions within the presence of two people. He [Wilcox] confirmed it to me and then Bernard said it hadn't happened. I think three people was sufficient. . . ." App. B, p. 12a.

A second allegation contained in the June 11, 1972 edition of TODAY concerned the purchase by Adams of some extra mirrors which Wilcox had purchased for

installation in the condominium project, Village Spires:

> "On another recent occasion Wilcox said Adams expressed interest in three smoked mirrors in the Village Spires. Adams inquired as to the cost and was told by Bernard that the contractor paid $150.00 and if Adams wanted them he could purchase them at that price. Adams gave a personal check for $150.00 to Bernard and took the mirrors. The next day he returned and told Bernard he wanted his $150 refunded in cash. He did not return the mirrors." App. B, p. 41a.

This "mirror incident" allegedly took place, as did the alleged "shakedown" of Bernard for $1,000.00, in connection with Adams' decision—after having reviewed the architect's plans and issued the requested construction permits—to refuse to approve the completed installation of interior and exterior doors in the Village Spires condeminium project. Replacement of the doors would have cost Wilcox's firm approximately $30,000.00 in extra costs.

At trial, Newcome testified that he first heard of the mirrors incident from Deputy Sheriff Sardella, based on Sardella's prior conversation with Wilcox. Wilcox testified that in his meeting with Sardella,

> "I related to him that our superintendent, Mr. Bernard, had also questioned Mr. Adams' motives and that Mr. Bernard had questioned whether or not he was harrassing or trying to solicit any favors or anything of this nature for making the change, and I related this to him [Sardella], yes." (T 502)

And, as to the truth of the underlying charge,

> "Q—And did you so receive such a check?
> "A—(Wilcox)—Yes, sir.
> "Q—Now, to your personal knowledge, did Mr. Adams come back to your company and ask for his hundred and fifty dollars back without giving the mirrors back?
> "A— He did not come to me.
> "Q—Now, did Bernard ever report any such thing to you that Mr. Adams has come back and asked for his hundred and fifty dollars back but wasn't going to give the hundred and fifty dollars back?
> "A—Mr. Bernard did state to me that he thought in consideration of the problems that Mr. Adams had gone through on the job, because it was unpopular, that maybe that money should be refunded to him.
> "Q—Did he say that Mr. Adams asked that it be refunded?
> "A—I don't remember that he did, but I can't say that he didn't." (T 510-511)

Sardella, under direct examination by Plaintiff's counsel, concerning his interviews of Wilcox, stated unequivocally that Wilcox told him that Adams had purchased "the mirrors with a check for $150.00, returned the next day and asked him for the money back in cash." App. B, p. 12a. Newcome testified that he then contacted Wilcox and confirmed what he understood Bernard to have told Wilcox regarding both the mirrors and the solicitation of a $1,000.00 bribe. At trial, Bernard admitted that he felt Adams' decision, after issuance of construction permit, to withhold approval of the doors was a "stupid" and "bad" decision. Yet he denied ever having refunded, or having told anyone that he refunded Adams' money.

A third statement which was published in TODAY and which served as a separate basis for Adams' complaint below reads:

> "The Mayor of Indian River Shores told TODAY that Adams attempted to persuade the mayor to write a personal check to Adams each year for $2,000 and another for $400 to Adams' secretary for 'extra work' which town building inspections caused Adams—work Adams was already being paid for." App. B, p. 36a.

At trial, Roland Miller, Mayor of Indian River Shores, testified that he had never made any of the statements quoted in TODAY either to Sardella or to Newcome. App. B, p. 17a. Sardella acknowledged that Mayor Miller had spoken to him of an attempt to shake down the City of Indian River Shores for unjustified pay for unjustified work, but denied that he had related such statements *to Newcome*. App. B. pp. 13a-14a. Connie Bishop, another defense witness, who at the time of trial was the Ft. Pierce Bureau Chief of TODAY but who was employed by the Vero Beach PRESS JOURNAL, a competitor, at the time of publication, stated that during the time period in question, she met with Miller for lunch and he vociferously complained that Adams was improperly seeking money "from me up there", meaning in the town of Indian River Shores. App. B, pp. 14a-16a. Under plaintiff's direct examination of him as an adverse witness, Newcome stated that he did speak with Miller concerning Adams' attempt to secure "payola", and that the published article accurately reflected what Miller had told him. App. B, pp. 16a-17a.

Thus, in assessing whether that portion of Newcome's article, which dealt with attempts by Adams to

receive payola for his work on behalf of the town of Indian River Shores, was published with actual malice, the jury had to weigh the testimony of (1) Newcome, who asserted that the published comments in question accurately reflected what Sardella and Mayor Miller had said to him, App. B, p. 16a; (2) Sardella, who testified that although, in his investigation of Adams, Miller had told him of Adams' attempt to obtain payola, he, Sardella, did not tell Newcome of this conversation, App. B, pp. 13a-14a; (3) Ms. Bishop, who testified that Miller expressed to her the very same charges of Adam's impropriety as Sardella and Newcome testified Miller had expressed to them, App. B, pp. 14a-16a; and (4) Mayor Miller, himself, who admitted discussing with both Sardella and Newcome the issue of overtime pay for Adams which was before the City Council of Indian River Shores, but denied telling anyone that Adams was trying to shake down the town for money he wasn't entitled to. App. B, p. 17a. It is, in part, on this welter of conflicting testimony that the jury based its findings that by "clear and convincing proof" the Petitioners in fact entertained serious doubt as to the truth of their published comments.

Another comment contained in the June 11, 1972 edition of TODAY, and which was objected to, was that attributed to one Robert DiBassie, a local contractor who had dealt with Mr. Adams and the Building Department over several years. The article read:

> "Bob LeBase [DiBassie], Vero Beach drywell contractor, described construction work as "a rotten goddam business.' City building inspectors can put a man out of business if they wish, the contractor said." App. B, pp. 39a-40a.

At trial, Newcome and Sardella testified that they met with DiBassie at a local bar, Big Daddy's Lounge, and engaged in a discussion concerning the operation of the Building Department by Adams. Newcome and Sardella's testimony corroborated the fact that DiBassie referred to the "rotten goddam [construction] business" wherein payoffs and selective enforcement of the building codes were not uncommon. App. B, pp. 17a-19a. DiBassie, however, testified that although he did meet once with Sardella and Newcome to discuss the local construction business, he never made the "rotten . . . business" statement and he denied finding any serious fault with Adams or the Building Department. DiBassie, however, did admit on cross-examination, that he had called St. Pierre to explain to him that he was sympathetic regarding St. Pierre's problems with Adams and that he (DiBassie) too was experiencing difficulties in dealing with Adams, App. B, pp. 21a-22a.

DiBassie also testified that in his conversation with Sardella, Sardella stated that he and Newcome were out "to get Adams." App. B, p. 20a. This was denied by Sardella and Newcome. App. B, pp. 18a, 23a.

The defense also called as a witness Ms. Shirley Burnett, who was the bartender at Big Daddy's Bar at the time of DiBassie's conversation with Sardella and Newcome. She testified that she was acquainted with DiBassie, Sardella, and Newcome and had seen them together on occasion at Big Daddy's. She also testified that on various occasions she had overheard DiBassie downgrading the construction trade in Vero Beach; that, contrary to the testimony of DiBassie, he had oftentimes used profane language in these conversations; and that he once stated, in apparent reference

to the Building Department, that "he wasn't going to kiss anybody's a - - to build in Vero Beach." App. B, pp. 23a-24a.

Also testifying for the defense was a Virginia Boso, who was employed as a receptionist at the Building Department, City of Vero Beach, from June, 1973 to June, 1974. She confirmed the general accuracy of allegations of selective enforcement of the Building Code, and alleged that at least from mid-1973 to mid-1974, Mr. DiBassie's requests for site and plan approvals generally received more favorable and expeditious treatment than those of other contractors, App. B, p. 25a. This not only corroborates Newcome's allegations of impropriety, but suggests possible bias and a lack of accuracy in DiBassie's testimony where he testified that they were "out to get" Adams and denied having ever told Sardella or Newcome of misconduct on Adams' part.

In addition, unlike DiBassie and Mayor Miller, none of those witnesses whose testimony corroborated either the accuracy of Newcome's attributions to sources, or the truth of the underlying charges against Adams, were shown to have made prior inconsistent statements. Finally, there was no admission or declaration against interest by Newcome or any other TODAY staff members to support any implication of publication with knowing or reckless falsity. *Goldwater* v. *Ginzburg,* 414 F.2d 324 at 336-337 (2nd Cir., 1969).

Admittedly, some of the cited sources for each of the news story's three major allegations against Adams deny either the truth of the underlying charge and/or the fact that they had made corroborative statements to Newcome. Nevertheless, in each and every instance, the evidence on all of these points is clearly in dispute.

Bearing in mind that even "negligence . . . is constitutionally insufficient to show actual malice," *New York Times* v. *Sullivan, supra,* 376 U.S. at 288, no implication—let alone clear and convincing proof—of actual malice arises from the foregoing evidence. In attempting to determine whether Petitioners acted with actual malice in publishing this article, we respectfully urge this Court to recall the fact that:

> "[A] vast amount of what is published in the daily and periodical press purports to be descriptive of what somebody *said* rather than what somebody *did*. Indeed, perhaps the largest share of news concerning the doings of government appears in the form of accounts of reports, speeches, press conferences, and the like. The question of the 'truth' of such an indirect newspaper report presents rather complicated problems.
>
> "A press report of what someone has said about an underlying event of news value can contain an almost infinite variety of shadings . . . [W]here the source itself has engaged in qualifying the information released, complexities ramify."

Time v. *Pape,* 401 U.S. 279, 285-286 (1971).

It is respectfully submitted that the uncorroborated testimony of Wilcox and Miller wherein they denied having made statements attributed to them does not constitute the affirmative evidence necessary to meet the constitutional standard of "clear and convincing proof." One of the major issues considered by the jury was whether to believe the testimony of Wilcox and Miller, on the one hand, or the testimony of Newcome, Sardella and St. Pierre—issues of personal appearance and credibility. The Supreme Court did not intend the constitutional zone of protection to hang by such a slender thread.

In *Cantrell* v. *Forest City Publishing Co.,* 419 U.S. 245 (1974), the Supreme Court held, in an invasion of privacy action based upon the "false light" theory, that there was sufficient affirmative evidence that the published comments had been fabricated by defendant's reporter with actual knowledge of falsity. *Cantrell* is of no comfort to plaintiff in the case at bar. Not only did Mrs. Cantrell deny the published comments attributed to her, but it was affirmatively established that defendant's reporter had not seen or interviewed her at all. Thus, there was *affirmative corroborative evidence* submitted by Mrs. Cantrell in support of her denial, sufficient to meet the constitutional standard. In the case at bar, plaintiff's witnesses admitted that the interviews had taken place and confirmed the accuracy of substantial portions of those interviews as reported in TODAY.

The vast majority of the articles printed daily by newspapers contain statements made by persons interviewed on matters of public interest. If newspapers are cast into jeopardy each time an attributed statement is published, then newspapers will soon contain merely reporters' subjective conclusions without attribution. The public's need to know is satisfied, in no small measure, only by providing the public, in its evaluation, the source of the statements reported by the newspapers.

Experience shows that persons quoted in the newspapers are rarely satisfied subjectively with those portions of their statements ultimately published. Claims are made daily by news sources who subsequently deny the making of the statements published; or who contend that the statements were published out of context; or who complain that the subjective position

to which the statements are addressed is so inartfully set forth as to distort; or who proclaim a failure of memory as to making the statements published. In today's news world, statements published in the newspapers about matters of public interest are often obtained by telephone or through personal interviews, unwitnessed by third parties. If the media's constitutional zone of protection can be jeopardized by a simple denial that the published statements were made by the news source, then the First Amendment's encouragement of a free press will be rendered impotent. See *Vandenburg* v. *Newsweek, Inc.,* 507 F.2d 1024 (5th Cir., 1975); *New York Times* v. *Connor,* 365 F.2d 567 (5th Cir., 1966).

If the judgment in the case at bar is allowed to stand, the rights of free speech and a free press virtually will be relegated, once again, to the common law libel standard of strict liability, dependent simply upon resolution by a jury of the subjective issue of the personal appearance and credibility of news sources at trial. The cautious editor will be returned to stringent self-censorship.

A simple denial of having made statements might require jury resolution of the subjective issue of credibility, *if* the constitutional burden of proving actual malice was that of a preponderance of the evidence; however, it is clearly inadequate to meet the far more demanding constitutional burden of showing actual malice by "clear and convincing proof." A denial by a news source does not create proof that is " . . . 'strong, positive and free from doubt' . . . and 'full, clear and decisive' . . ." *Stone* v. *Essex County Newspapers, Inc.,* 330 N.E.2d 161, at 175 (Mass., 1975). Neither does it accord with the conclusion of this Court in *Gertz* v. *Welch,* 418 U.S. 323, 340: "Allowing the media to

avoid liability only by proving the truth of all injurious statements does not accord adequate protection to First Amendment liberties."

The evidence of actual malice adduced below clearly does not rise to the level of credibility as that reviewed by this Court in *Curtis* v. *Butts,* 388 U.S. 158 (1967). In *Butts,* the Saturday Evening Post knew its sole and one-time informant had been put on probation due to bad check charges. It also was shown that

> "[e]lementary precautions were . . . ignored. The Saturday Evening Post . . . proceeded to publish the story on the basis of [their sole source's] affidavit without substantial independent support. [The source's] notes were not even reviewed by any of the magazine's personnel prior to publication." *Id.* at 157.

In contrast to the evidence before this Court in *Butts,* the evidence below of knowing or reckless disregard for falsity is clearly disputed by Newcome, by the editorial staff of TODAY, and by Sardella and St. Pierre. Beyond that, trial testimony as to the extensive degree of pre-examination and review given to the articles by both counsel and editorial personnel for TODAY is uncontroverted and—the question of the negligence or uncriticalness of that review aside—clearly militates against a finding of publication with knowing or reckless falsity. App. B, pp. 26a-30a. See also, *Cardillo* v. *Doubleday & Co.,* 366 F.Supp. 92, 94 (S.D.N.Y., 1973), aff'd, 518 F.2d 638 (2nd Cir., 1975); *Time, Inc.* v. *McLaney,* 406 F.2d 565, 570-573 (5th Cir., 1969); *Baldine* v. *Sharon Herald Co.,* 391 F.2d 703, 707 (3rd Cir., 1968); *Buchanan* v. *Associated Press,* 398 F. Supp. 1196 (D.D.C., 1975); *Meeropol* v. *Nizer,* 381 F. Supp. 29, 35 (S.D.N.Y., 1974), aff'd, 505 F.2d 232 (2nd Cir., 1974).

Nor can actual malice be implied from the fact that the newspaper published the allegations with the knowledge that two principals, Adams and Bernard, denied the charges. A case on point is *Edwards* v. *National Audubon Society, Inc.*, —— F.2d —— (2nd Cir., 1977), in which public figure scientists brought a libel action as a result of a newspaper article which reported charges by the National Audubon Society that the scientists were being paid by the pesticide industry to lie about the effect of the pesticide DDT on birds. The Court rejected the scientists' contention that the charges were published with actual malice because the reporter involved heard the scientists' denials before publication. The court noted:

> "Surely liability under the 'clear and convincing proof' standard of *New York Times* v. *Sullivan* cannot be predicated on mere denials, however vehement; such denials are so commonplace in the world of polemical charge and countercharge that, in themselves, they hardly alert the conscientious reporter to the likelihood of error."

Nor does the decision to publish, in spite of the fact that "Newcome knew his source St. Pierre had a feud going with [Adams]", *Cape Publications, Inc.* v. *Adams,* 336 So.2d 1197, at 1200 (1976), in itself constitute evidence of actual malice. App. A, p. 5a. As noted in *Washington Post Co.* v. *Keogh,* 365 F.2d 965 (D.C. Cir. 1966), *cert. denied,* 385 U.S. 1011 (1967) "[A] publisher has reason to suspect a publication's accuracy where he knows or should know that the author or endorser is *persistently* inaccurate." *Id.* at 971 (emphasis added). Plaintiff, it is respectfully submitted, made no showing at trial below of "persistent inaccuracy" by Newcome, St. Pierre, or Sardella.

Admittedly, a publisher's

> "[p]rofessions of good faith will be unlikely to prove persuasive, for example, where a story is fabricated. . ., is the product of his imagination, or is based wholly on an unverified, anonymous telephone call. Nor will they be likely to prevail when the publisher's allegation are so inherently improbable that only a reckless man would have put them in circulation." *St. Amant* v. *Thompson, supra* at 732.

Petitioners respectfully submit that a review of the trial record below will affirmatively persuade this Court that none of the foregoing circumstances permitting a finding of actual malice were shown, by clear and convincing proof, to have been involved in petitioners' publication at issue herein.

After receiving instructions from the trial court, the jury retired to deliberate, and returned with a verdict of $114,000.00 in compensatory damages (based upon the circulation of 57,000 copies of the defamatory article), and $100,000.00 in punitive damages. This verdict was unwarranted by the evidence. Moreover, the trial court should not have turned the case over for deliberation by the jury, without first having ruled on Petitioners' pending motion for directed verdict.

Because experience teaches that "the possibility [exists] that a jury will use the cloak of a general verdict to punish unpopular ideas or speakers", *Rosenblatt* v. *Baer,* 383 U.S. 75, at 88, n.15 (1966), it is critically important that.

> "judges focus attention on the summary judgment, directed verdict and judgment notwithstanding the verdict procedures in libel actions.

> When civil cases may have a chilling effect on First Amendments rights [See, *Dombrowski* v. *Pfister,* 380 U.S. 470 (1965); *Konigsberg* v. *Time, Inc.,* 312 F.Supp. 848 (S.D.N.Y., 1970); *Sprouse* v. *Clay Communications, Inc.,* 211 S.E.2d 674 (1975), *cert. denied,* 423 U.S. 882 (1975)] special care is appropriate. Thus, a judicial examination at these stages of the proceeding, closely scrutinizing the evidence to determine whether the case should be terminated in a defendant's favor, provides a buffer against possible First Amendment interference." *Guam Federation of Teachers, Local 1581, A.F.T.* v. *Ysrael,* 492 F.2d 438, at 441 (9th Cir., 1974).

See also, *Bon Air Hotel, Inc.* v. *Time, Inc.,* 426 F.2d 858, 864-865 (5th Cir., 1970); *Wasserman* v. *Time, Inc.* 138 U.S. App. D.C. 7, 9, 424 F.2d 920, 922-923 (D.C. Cir., 1970) (J. Skelly Wright, concurring); *Cerrito* v. *Time, Inc.,* 302 F.Supp. 1071, 1075 (N.D. Cal., 1969), aff'd 449 F.2d 306 (9th Cir., 1971); *McFarland* v. *Hearst Corporation,* 332 F.Supp. 746 (D. Md., 1971). This the trial court failed to do.

The primary purpose and import of this Court's landmark decision in *New York Times* v. *Sullivan* is to free newspapers from jury consideration of alleged libels against public officials, unless the evidence presented by the plaintiff, judicially considered, contains clear and convincing proof of actual malice. At trial below, the court denied Petitioners' motion for summary judgment, noting that ". . . there may be an inference drawable from the testimony that would establish a genuine issue of material fact." Clearly, the possible existence of an inference which would establish a genuine issue of material fact is insufficient, and too speculative a showing, to authorize submission of the case to the jury.

At the close of plaintiff's evidence, Petitioners moved for a directed verdict, which was denied, without any discussion by the court of the sufficiency of the evidence. Later, at the close of all the evidence, Petitioners renewed the motion for directed verdict. The court took this motion under advisement, and then proceeded to instruct the jury and submit the case for their deliberation. This, it is respectfully submitted, constituted reversible error. For,

> "in order to recover, [Plaintiff] would have to prove with 'convincing clarity' that the statements of the publications . . . were made with knowledge that they were false . . . or were made with reckless disregard of whether they were false or not. *And in order to be entitled to proceed in this respect, [Plaintiff] could be required to show, on proper challenge as by the motion and showing for summary disposition here, that it had sufficient probative substance to be able litigably to give rise to an issue of fact on whether such malice actually existed or not." United Medical Laboratories* v. *C.B.S.,* 404 F.2d 706, 712 (9th Cir., 1968) (emphasis added.)

The court below, by reserving judgment on Petitioners' pending motion for directed verdict and proceeding to submit the case to the jury for their deliberation, clearly failed to provide this constitutionally mandated "safeguard of judicial scrutiny." *Id.* at 713. As interpreted by the news media throughout this country, *New York Times* v. *Sullivan*

> "added to the tort law of the individual States a constitutional zone of protection for errors of fact caused by negligence. The publisher who maintains a standard of care such as to avoid knowing falsehood or reckless disregard of the truth is

thereby given assurance that those errors that nonetheless occur will not lay him open to an indeterminable financial liability." *Time* v. *Pape*, 401 U.S. 279, 291 (1971).

In deliberately proceeding to publish the TODAY article on corruption and mismanagement within the local building department, the editors and reporters involved specifically relied on such assurance; and, the trial court below effectively eviscerated that assurance. At the time of publication, petitioners were not unmindful of the prior denials by Adams and Bernard. Petitioners were also aware that other individuals who served as credible sources might face certain pressures to recant—pressure from both the standpoint of threatened exposure to litigation and from the standpoint of harrassment at the hands of Respondent.

Yet, this Court has explicitly established that "a rule compelling the critic of official conduct to guarantee the truth of all his factual assertions . . . leads to . . . [impermissible] 'self-censorship.'" *New York Times* v. *Sullivan, supra* at 279. Thus, in justifiable reliance upon this constitutionally based conditional privilege, after substantial factual research, and upon a good faith belief in the accuracy of its allegations, Petitioners published.

Nevertheless, although "malice may not be presumed but is a matter of proof by the plaintiff", *Fram* v. *Yellow Cab Company*, 380 F.Supp. 1314, 1335 (W.D.Pa. 1974), the trial court submitted this case to the jury, which then reasoned by inference upon inference that (1) if the firsthand and/or secondhand source for certain allegations denied giving Petitioners certain corraborative information, then (2) at the time of publication, Newcome must have known they did not have corraborative information, and (3) therefore Newcome must have concocted the testimonial basis for his story and published with actual malice.

Thus, the verdict below subjects Petitioners to enormous financial liability when Plaintiff's only evidence, directly probative of Petitioners' subjective awareness at the time of publication, is the hotly disputed allegation of DiBassie that Newcome and Sardella had said they were "out to get" Adams. Clearly, this falls short of proof with convincing clarity, and a verdict founded on such evidence "constitute[s] a forbidden intrusion on the field of free expression." *New York Times, supra* at 285.

The Award to Plaintiff of $214,000, Including $100,000 in Punitive Damages, Impairs the Exercise of First Amendment Freedoms to the Extent of Imposing Self-Censorship, Is Unsupported by the Evidence, and Does Not Properly Promote a Compelling State Interest

Petitioners respectfully submit that the jury's award to Adams of $114,000 in compensatory damages, and $100,000 in punitive damages, is shockingly excessive in light of the insubstantial evidence adduced at trial with respect to both the general and special damages suffered by Adams, and the absence of "highly motivated, tortious conduct [by Cape Publications, Inc.], i.e., reprehensible conduct that is motivated by ill will, or is accompanied by malice, fraud or oppression." *Maheu* v. *Hughes Tool Co.*, 384 F.Supp. 166, 172 (C.D. Cal., 1974). Adams himself testified that he is still employed as Chief of the Building Department and that, "both before this publication and after this publication," he received "derogatory letters" concerning his performance in the contracting field. App. B, p. 31a.

Mr. William Hawkins, a Vero Beach plumbing contractor, testified that, among those persons in the local construction trades, Adams' reputation for "expertise and ability in the performance of his duties," and "for his fairness in the performance of his duties," was bad. App. B., p. 31a. Hawkins also testified that in 1972, another local builder passed inspection by Adams' office after installing—contrary to the Building Code—plastice pipe in a multi-unit dwelling. Hawkins testified that he brought this to the attention of Adams, but nothing was done. He then installed plastic pipe in one of his own multi-unit projects and was unable to receive Adams' inspection approval. Hawkins' complaints were ignored; fortunately, the Code was subsequently amended to permit plastic pipe. This incident was accurately reported in the June 11, 1972 edition of TODAY. Thereafter, Hawkins testified, he had a very difficult time getting any of his plumbing work approved by inspectors from Adams' office.

Mr. Carl Hedin, a Vero Beach general contractor and member of the Association of General Contractors, also testified that Adams' prior "reputation among builders and in the building trade in the performance of his duties as Building Official" was bad. App. B, pp. 31a-32a.

Another witness, C. Reed Knight, a local builder and citrus grower, testified regarding certain instances of "dual enforcement" of the Building Code by Adams' office which had the "appearance of favoritism." He also testified that prior to June of 1972, Adams "didn't have a good reputation" for "fairness in the performance of his duties as Building Official." App. B, pp. 33a-34a.

Finally Robert Stone testified that he represented Bernard St. Pierre in a criminal proceeding, initiated by Adams, wherein St. Pierre was charged with willful violation of the Building Code in connection with a particular construction project. St. Pierre was found not guilty by a jury, but was still not allowed by Adams to proceed with construction. In an effort to compel Adams to permit St. Pierre to proceed with construction, Stone then filed a mandamus proceeding against Adams in which he introduced tapes of earlier conversations between Adams and St. Pierre, wherein Adams insisted that he would not permit St. Pierre to proceed with construction unless and until St. Pierre pled guilty in the criminal proceedings. St. Pierre prevailed in the mandamus action and then filed a civil suit for damages against Adams and the City of Vero Beach. This action was settled out of court; the fact of this settlement was not permitted to be introduced into evidence below. The witness, Stone, testified that, inasmuch as a Vero Beach municipal ordinance authorized revocation of a builder's license upon conviction for Building Code violations, he vehemently questioned the propriety of Adams' conduct—both in terms of possible extortion and possible perjury on Adams' part at St. Pierre's criminal trial. App. B, pp. 35a-36a.

Various witnesses testified as to the injury suffered by Adams as a result of the publication of Newcome's article. Adams' wife testified that, after publication, Adams became withdrawn and their married life was adversely affected for a period of months. One witness, Ms. Fleisher, who was a neighbor and friend of Adams, testified that Adams became withdrawn and irritable following the publication of Newcome's story, but that he had improved and was becoming more sociable

again. A licensed contractor and member of the County Commission named Jack Dritenbas, and Alma Lee Long, another member of the County Commission, testified that Adams' prior reputation for truth and veracity was good.

It has been emphasized by various state courts, federal circuit courts, commentators, and members of this Court, that a jury's discretion in the award of punitive damages in libel actions imposes a very direct and substantial chilling effect upon the exercise of First Amendment press freedoms. See *Gertz* v. *Welch,* 418 U.S. 323, at 346, 349-350 (1974); *Rosenbloom* v. *Metromedia, Inc.,* 403 U.S. 29, at 58-65 (White, J., concurring), 74-75 (Harlan, J., dissenting), 78-87 (Marshall and Stewart, JJ., dissenting) (1971); *Buckley* v. *Littell,* 539 F.2d 882, 897 (2nd Cir., 1976); *Maheu* v. *Hughes Tool Co.,* 384 F.Supp. 166 (C.D.Cal., 1974); *Afro-American Publishing Co.* v. *Jaffe,* 366 F.2d 649, 662 (D.C. Cir., 1966); *Stone* v. *Essex,* 330 N.E.2d 161 (Mass., 1975); *Taskett* v. *King Broadcasting Co.,* 86 Wash.2d 439, 545 P.2d 81 (1975); *Farrar* v. *Tribune Pub. Co.,* 57 Wash. 549, 358 P.2d 792 (1961); Restatement (Second) of Torts, Explanatory Notes, § 621, Comments b and f, at 286, 288 (Tentative Draft, Nov. 20, 1974); and "Punitive Damages in Defamation Litigation: A Clear and Present Danger to Freedom of Speech", 64 Yale L. J. 610, 613 (1955). As eloquently articulated by Justice Marshall, in his dissent from the majority opinion in *Rosenbloom* v. *Metromedia, Inc.:*

> "Our notions of liberty require a free and vigorous press that presents what it believes to be information of interest or importance; not timorous, afraid of an error that leaves it open to liability for hundreds of thousands of dollars.
>
> * * *

> *"The unlimited discretion exercised by juries in awarding punitive damages and presumed damages* [available in Florida, under *Bobenbousen* v. *Cassat,* 344 So.2d 279, 282 (1977)], *compounds the problem of self-censorship that necessarily results from the awarding of huge judgments. This discretion allows juries to penalize heavily the unorthodox and the unpopular and exact little from others."* Id. at 82, 84 (emphasis added.)

Thus, inasmuch as the award of punitive damages in libel actions may work a restraint upon the exercise of First Amendment freedoms, this Court must "make an independent examination of the whole record," in order to "assure that the judgment does not constitute a forbidden instrusion on the field of free expression." *New York Times* v. *Sullivan, supra,* at 285; see also, *Edwards* v. *South Carolina,* 372 U.S. 229, 235 (1963); *Blackburn* v. *Alabama,* 361 U.S. 199, 205 n.5 (1960). Moreover, since the free exercise of First Amendment freedoms are at stake, any punitive award may be upheld only if it effectuates a "subordinating [state] interest which is compelling." *Bates* v. *Little Rock,* 361 U.S. 516, 524 (1960).

The award of punitive damages must also be shown to be "necessary, and not merely rationally related, to the accomplishment of a permissible state policy." *McLaughlin* v. *Florida,* 379 U.S. 184, 196 (1964). Finally, the award of punitive damages must effectuate the compelling state interest by the least restrictive means available. See, *Nebraska Press Ass'n* v. *Stuart,* —— U.S. ——, 49 L.Ed 2d 683 (1976); *Coates* v. *Cincinnati,* 402 U.S. 611 (1971).

When considered in light of the foregoing multifold standard of review, the award to Adams below of

$100,000 in punitive damages clearly constitutes an unwarranted impairment of press freedom. As a practical matter, the First Amendment field—where the tension between a Constitutional right and the state interest in redressing reputational injury is immediately felt—is an inappropriate area of the law for the intervention of elements of criminal law, i.e., punitive sanctions.[1]

Moreover, the state's interest in safeguarding the reputation of its public officials is not clearly of compelling magnitude. As noted by this Court in *Gertz* v. *Welch,* 418 U.S. 323 (1974):

> "The first remedy of any victim of defamation is self-help—using available opportunities to contradict the lie or correct the error and thereby to minimize its adverse impact on reputation. *Public officials and public figures usually enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy. Private individuals are therefore more vulnerable to injury and the interest in protecting them is correspondingly greater.*" *Id.* at 344 (emphasis added).

Moreover,

> "the communications media are entitled to act on the assumption that public officials and public figures have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them. . . . Private individuals are not only more vulnerable to injury than public officials and public figures; *they are also more deserving of recovery.*" *Id.* at 345 (emphasis added).

[1] By contrast, in areas of tort law such as assault, battery, or false imprisonment, where no mandatory constitutional right may be jeopardized, a constitutionally based bar on punitive damages would seem to be unnecessary. See, "Punitive Damages In Defamation Actions Brought By Public Figures Chill First Amendment Rights And Are Unconstitutional Unless Narrowly and Necessarily Promoting Compelling State Interest", 28 Vanderbilt L.Rev. 887 (1975); "Punitive Damages In Defamation Litigation: A Clear And Present Danger To Freedom Of Speech", 64 Yale L. J. 610 (1955).

Yet even though private individuals may be more deserving of recovery than public figures,

> "the States have *no substantial interest in securing for plaintiffs such as this petitioner* [i.e., private figures] *awards of money damages far in excess of any actual injury.* . . . We endorse the strong and legitimate state interest in compensating private individuals for injury to reputation. *But this countervailing state interest extends no further than compensation for actual injury.*" *Id.* at 349 (emphasis added).

Given the more compelling interest in publication involved herein—that of allowing unfettered public discussion of the conduct of public officials and governmental matters as opposed to private matters, *Cox Broadcasting Corp.* v. *Cohn,* 420 U.S. 469, 492 (1975), *Mills* v. *Alabama,* 384 U.S. 214, 218-219 (1966)—an equally strong argument exists for limiting punitive damage awards under the actual malice standard, at least where a public official such as Adams is involved!

At present, the limitations upon a jury's award of punitive damages are too broad and vague to be any real limitation at all. Oftentimes, as in the trial of the case below, juries "award damages which reflect their disdain for the publishing of an unpopular opinion, rather than a realistic level of compensation for the actual injury sustained", *Taskett* v. *King, supra* at 86; see also, *Reynolds* v. *Pegler,* 123 F.Supp. 34 (S.D.N.Y.

1954). Courts in many jurisdictions therefore have held that an award of punitive damages must bear a "reasonable relationship" to the actual damages assessed. Yet, they recognize no fixed ratio by which to determine the proper proportion between actual and punitive damages. See "Annotation: Excessiveness or Inadequacy of Damages for Defamation", 35 ALR 2d 218, 255, § 2; 1 Hanson, *Libel and Related Torts,* § 167 (1969). In Florida, moreover, punitive damages may be awarded even though the amount of actual damages is neither found nor shown. *Saunders Hardware Five and Ten, Inc.* v. *Low,* 307 So.2d 893 (Fla. App. 1974). Such "untrammeled discretion", *Davis* v. *Hearst,* 160 Cal. 143 (1911), in the award of punitive damages in Florida libel cases clearly does not *narrowly and necessarily* promote a particular state interest in either affording Adams redress for injury to his reputation, or in preventing a reoccurrence of Petitioners' "culpable" conduct. See *Maheu* v. *Hughes Tool Co., supra; Farrar* v. *Tribune Pub. Co., supra.* Thus, without further guidance from this Court in this area,

> "[a]lthough the *New York Times* rule provided the publisher with greater protection at the threshold of liability, it [cannot] cure the self-censorship effect of punitive damages. Before speaking, the publisher must still consider the risk of unlimited recovery in the event the plaintiff satisfies the requirement of actual malice." *Maheu, supra* at 170.

Finally, the award of punitive damages against only Cape Publications, Incorporated, compounds the impermissible and grossly inhibitory effect of the jury's verdict. As noted above, little or no evidence was introduced at trial which would tend to show "actual malice" on the part of the editorial and managerial staff

of TODAY. Moreover, although the editorial staff had great confidence in Newcome's veracity—based upon his prior record of thorough and authoritive investigative reporting—they nevertheless conducted their own independent review of the articles in question. Those experienced and knowledgeable persons who worked in positions of authority at TODAY, and who were involved in the editing of the articles, therefore properly and in good faith "assume[d] the truth of facts contained in [Newcome's] stories." *Walker* v. *Colorado Springs Sun, Inc.,* 538 P.2d at 458 (Colo.), *cert. denied,* 96 S.Ct. 469 (1975).

Yet the jury's verdict for punitive damages—which theoretically is intended to punish and to deter repetition of only the most egregiously tortious sort of conduct—was directed at Cape Publications, Inc., only, and not at Defendants Baker or Newcome who, as employees of TODAY, were most directly involved in the preparation and publication of the articles in question. This, it is respectfully submitted, underscores the capricious nature of the entire judgment in this case—both for punitive and compensatory damages. As noted in *Williams* v. *City of New York,* 508 F.2d 356 at 360-361 (4th Cir., 1974), quoting Mr. Justice Gray in *Lake Shore & Michigan S. Ry.* v. *Prentice,* 147 U.S. 101, 107-108 (1893), in part as follows:

> "Exemplary or punitive damages, being awarded, not by way of compensation to the sufferer, but by way of punishment to the offender, and as warning to others, can only be awarded against one who has participated in the offense. A principal therefore, though of course liable to make compensation for injuries done by his agent, within the scope of his employment, cannot be held liable for exemplary

or punitive damages, merely by reason of wanton, oppressive or malicious intent on the part of the agent.

* * *

"No doubt a corporation, like a natural person, may be held liable in exemplary or punitive damages for the act of an agent within the scope of his employment, provided the criminal intent, necessary to warrant the imposition of such damages, is brought home to the corporation." (emphasis added).

Therefore, "unless the employer is himself guilty of some tortious act (or omission) because his employee has misbehaved, an award punishing the employer and deterring him and others situated likewise (i.e., other employers) makes no sense at all." ***Williams*** v. ***City of New York, supra*** at 360.

CONCLUSION

Petitioners strongly urge this Court to grant this request that it assess anew the validity of the decision below in light of ***New York Times*** v. ***Sullivan*** and subsequent cases, "not [only] because their own rights of free expression are violated, but because of a judicial prediction or assumption that the very existence [of such broadsweeping jury discretion in awarding punitive damages in Florida] may cause others not before the court to refrain from constitutionally protected speech or expression." ***Broadrick*** v. ***Oklahoma,*** 413 U.S. 601, 612 (1973).

Wherefore, it is respectfully prayed that a writ of certiorari be granted in order to review the opinion below of the Fourth District Court of Appeal of the State of Florida and thereby determine whether the evidence at trial constitutionally supports the judg-

ment and award of damages against Petitioner, and whether the present system in Florida, which permits the assessment in defamation actions of unlimited and wholly unpredictable damages, adequately protects the very real First Amendment values at stake herein.

S. Lindsey Holland, Jr.
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APPENDIX

APPENDIX A

Opinions Below

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

CAPE PUBLICATIONS, INC. et al., *Appellants*,

v.

Donald F. ADAMS, *Appellee*.

CAPE PUBLICATIONS, INC., *Appellant*,

v.

Donald F. ADAMS et al., *Appellees*.

Nos. 74-1731, 74-1760

Aug. 27, 1976

Rehearing Denied October 1, 1976

S. Lindsey Holland, Jr., of Crofton, Holland, Starling, Harris & Severs, P. A., Melbourne, for appellants.

Larry Klein and Cone, Wagner, Nugent, Johnson & McKeown, P. A., West Palm Beach, for appellee-Donald F. Adams.

DOWNEY, *Judge*.

Appellee (Donald Adams) sued appellants in one count for libel and several other defendants who are not involved in this appeal (Sardella, Stone, and St. Pierre) in a second count for conspiracy to libel. The trial court granted a directed verdict for all the defendants as to the conspiracy count. The jury returned a verdict on the libel count for $114,000 compensatory damages against all the appellants

and $100,000 punitive damages solely against appellant, Cape Publications, Inc.

Appellee was the Building Official of the City of Vero Beach, Florida and Indian River County. Appellant Newcome was a reporter and bureau chief for a Brevard County newspaper named Today, which was owned by the predecessor of appellant Cape Publications, Inc. Appellant Buddy Baker was the managing editor of Today. In the course of his employment Newcome wrote several articles about appellee and the conduct of his office. Baker approved the articles, and Cape Publications' predecessor published them. Two of the articles forming the primary basis for the alleged libel essentially charge appellee with: a) soliciting a construction supervisor (Bernard) for a $1000 bribe and attempting to make Bernard return to appellee in cash $150 which appellee had paid by check for three mirrors; and b) attempting to persuade the Mayor of Indian River Shores to pay appellee $2000 (plus $400 for appellee's secretary) annually for work for which appellee had already been compensated. The article involving Bernard set forth that both Bernard and appellee denied either of the reported wrongful acts. But it nevertheless stated that Wilcox, Bernard's supervisor, had told Today that Bernard had in fact reported the two solicitations to Wilcox. The article involving Miller, the Mayor of Indian River Shores, set forth that Miller had stated that appellee had requested the improper payments from him. Miller testified at trial that he had denied the statements attributed to him and had advised Newcome of the true facts by furnishing copies of the town's records or telling Newcome where he could obtain them.

Thus, we have a newspaper and its employees charged with libelling a public official. All parties agree that appellee is a public official and that the rule announced in *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), regarding the necessary quality of

proof applies in this case. Therefore, in order for appellee to recover it was essential that he prove actual malice on the part of appellants with convincing clarity. "Actual malice" in the New York Times sense means that the material was published with knowledge that it was false or with reckless disregard of whether it was false or not. This court in the recent case of *Palm Beach Newspapers, Inc. v. Early*, 334 So.2d 50 (Fla.4th DCA 1976), noted that the New York Times case stated:

> "'The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice"—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.' (376 U.S. at 279-80, 84 S.Ct. at 726)"

Adverting now to the evidence adduced at trial, which we must view in the light most favorable to the verdict,[1] it is our considered opinion after reviewing the entire record, as we must on appeal in a libel case involving a public official,[2] that the proof of actual malice was more than adequate to meet the burden of convincing clarity.

The evidence, in brief, shows the folowing things. Newcome, St. Pierre, and Sardella were close friends. St. Pierre, a contractor, and appellee had a running feud stemming from appellee's having St. Pierre arrested for violating a stop work order on a construction job. Sardella and Newcome knew this. St. Pierre told Newcome that a contractor named Wilcox had told him and Sardella that appellee had

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[1] *Alioto v. Cowles Communications, Inc.*, 519 F.2d 777, 780 (9th Cir. 1975), cert. denied 423 U.S. 930, 96 S.Ct. 280, 46 L.Ed. 2d 259; *Mahnke v. Northwest Publications, Inc.*, 280 Minn. 328, 160 N.W.2d 1, 3-4 (1968).

[2] *New York Times Co. v. Sullivan*, supra.

solicited a bribe from Wilcox's supervisor. Newcome talked to Wilcox about this statement and on cross examination Newcome admitted that Wilcox was evasive about the entire matter. Wilcox testified that he had never made such a statement to St. Pierre, Sardella, or Newcome, and that Bernard had never made any such statement to him. Newcome then talked to Bernard, who denied that appellee had solicited a bribe or that he had ever told Wilcox of such an event.

Sardella told Newcome that Wilcox had told him that appellee had purchased three mirrors from Wilcox on a construction site with a $150 check and that later appellee approached Wilcox's supervisor, Bernard, and demanded that the $150 be returned to him in cash. Wilcox denied that Bernard ever told him of this demand and denied he ever made any such statement to Sardella. Newcome contacted Bernard and the latter denied that any such demand had been made or that he had ever so advised Wilcox.

Sardella told Newcome that Miller had stated that appellee asked Miller, the Mayor of Indian River Shores, to personally pay him $2,000 per year and his secretary $400 for work they were doing for Indian River Shores for which work they had already received compensation. Miller denied making any such statement and said he had told Newcome that there had been open discussions between appellee and Miller and the Town Council of Indian River Shores relative to compensation for appellee for the extra work appellee had been doing for the town. Miller either gave Newcome copies of the relevant files or told him where they could be obtained.

Newcome contacted Barclay Henderson, Executive Director of the Florida East Coast Chapter of the General Contractors of America, to see if his organization might take some action against appellee. Newcome met with Henderson and gave him information about appellee. Henderson then conducted an investigation and met with various

contractors and appellee. Thereafter, Henderson advised Newcome that he found no basis for any action against appellee and advised Newcome not to print any articles on the matter.

Sardella introduced Newcome to another contractor named DiBassie. During a meeting with DiBassie at which Newcome was present, DiBassie did not accuse appellee of any wrongdoing. He testified at trial that Newcome and Sardella said they were going to get appellee and that they were going to put him in jail.

The jury could properly conclude that every time Newcome went to the sources of the information concerning alleged wrongdoing (Bernard and Miller, the only persons with personal knowledge of the facts), they told Newcome the statements were untrue. This did not happen with just one of the events but with all three! In addition, Newcome knew his source St. Pierre had a feud going with appellee, so he was on notice as to his questionable credibility. Finally, DiBassie, who, acording to Today, accused appellee of improper conduct, denied making any accusation. On the other hand he testified Newcome and Sardella said they were going to get appellee and put him in jail.

In the face of all those red flags flying, Newcome wrote the articles complained of, imputing criminal conduct to appellee. The editorial staff of the newspaper, after giving full consideration to their content and the possible libellous implications arising therefrom, decided to print the articles.

As we view the credible evidence which the jury had before it, there is clear and convincing support for a finding that appellants exhibited a reckless disregard of whether the charges were true or false, i.e., that they published the articles with a high degree of awareness of the probable falsity of the statements involved (*Garrison v. Louisiana*, 379 U.S. 64, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964)) and with

serious doubt as to the truth of the publication (*St. Amant v. Thompson*, 390 U.S. 727, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968)).

Appellants posed eleven points on appeal. We have given each serious consideration and find that they fail to demonstrate reversible error.

Accordingly, the judgment appealed from in each of these appeals is affirmed.

WALDEN, J., and MCCAULEY, JAMES A., *Associate Judge, concur.*

SUPREME COURT OF FLORIDA

Friday, June 24, 1977

CASE No. 50,414

DISTRICT COURT OF APPEAL, FOURTH DISTRICT

74-1731
74-1760

CAPE PUBLICATIONS, INC.,
BUDDY BAKER and DUKE NEWCOME, *Petitioners,*

vs.

DONALD F. ADAMS, *Respondent.*

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

OVERTON, C.J., ADKINS, BOYD, ENGLAND and HATCHETT, JJ., *concur.*

A True Copy
TEST:
Sid J. White
Clerk Supreme Court.
By: Dublin Causseau
Deputy Clerk

C
cc: Hon. Emmett J. Comiskey,
Clerk
Hon. Raymond C. Winstead, Jr.,
Clerk
Hon. Tom Waddell, Jr., Judge
Hon. S. Lindsey Holland, Jr.
of Crofton, Holland,
Starling, Haris & Severs
Hon. Larry Klein
Cone, Owen, Wagner, Nugent
Johnson & McKeown

APPENDIX B

Excerpts from Trial Testimony

Testimony of Duke Newcome

[T-136] Now, were you getting information from Mr. St. Pierre? Would Mr. St. Pierre give you information about people that he had talked to, contractors? A. Yes, sir.

• • •

[T-137] Q. Sardella give you some names? A. In all probability, yes, but I don't recall specifically.

Q. Did he not give you some specific information about what these people had told him? A. Yes, sir, I'm sure he did. I hope you won't ask me what and where, but we did talk and exchange information.

Q. He told you about Roland Miller? A. I don't know where—if it's him or Bernie St. Pierre.

Q. He told you about Wilcox? A. No, I believe Bernie St. Pierre told me about Wilcox.

Q. Could Mr. Sardella have told you and you just don't remember? A. He could have, yes, sir.

[T-1056] Q. All right, sir. Now, the statement of Mr. Wilcox quoted in the newspaper which I have just mentioned to the witness, St. Pierre, as to those statements; what were your sources? A. Mr. Wilcox confirmed to me—I first discussed it with Mr. Sardella, or St. Pierre, and learned what Mr. Wilcox had told them about the attempted shakedown.

Q. Did you report accurately what they told you he said? A. Yes, sir.

Q. All right, and later you saw Mr. Wilcox yourself? A. Yes, sir.

Q. And what, if anything, did he confirm? A. He denied that, that there had been an offer from his superintendent to Mr. Adams of $500. He said [T-1057] he, he wanted to make it perfectly clear and intended to make it clear with Mr. Sardella, but he said there was request of a thousand dollars from Mr. Adams.

Testimony of Duke Newcome

Q. And that had been reported to him by his superintendent, Mr. Bernard? A. Yes, sir?

Q. Did he deny in any way having the conversation with Mr. Sardella and Mr. St. Pierre in which he said essentially the same thing? A. No, sir, he confirmed that clearly.

Q. Were these sources then yours, Sardella's and St. Pierre's, the basis for your putting this in the article? A. Yes, sir.

Q. What did you feel was the truth of the matter from your investigation?

• • •

[T-1057] THE WITNESSS: Yes, sir. I had no reason to [T-1058] doubt that Mr. Wilcox had had this discussion with Mr. Sardella and Mr. St. Pierre. Both, they told me about it, then Mr. Wilcox confirmed it.

• • •

BY MR. HOLLAND:

Q. All right, sir, and what was your feeling then after getting the denial from Bernard as to this which you printed? A. I think that was pretty well covered when Mr. Wilcox made such a strong point that his man, his superintendent had not made an offer of a bribe. That would be a violation of the law, and when he, when he [T-1058] wanted to get away from that part of it, and then Mr. Bernard confirmed that he hadn't made any such, I figure Mr. Bernard didn't want any part of it, just a distasteful thing and something that he didn't have any desire to get involved in.

[T-1059] Q. Did Mr. Bernard's denial cause you to question Mr. Wilcox' statement that Bernard had reported the one thousand dollar suggestion to Mr. Adams? A. No, I still believed Mr. Wilcox. We had a rather lengthy conversation, and my conversation with Mr. Bernard must have lasted all of two minutes. He just made a quick denial.

Testimony of Duke Newcome

. He was reluctant to talk to you? A. Yes, sir.
Q. But Mr. Wilcox was not? A. That's true.

• • •

Testimony of Donald Wilcox

[T-505] Q. Now, did you at that conversation tell Mr. Sardella that Mr. Bernard had approached—that Mr. Bernard had been approached by Mr. Adams and asked that Mr. Adams pay him a thousand dollars as a bribe? Did you tell Mr. Sardella that, that that's what Mr. Bernard had said? A. I don't remember making any such statement as to quoting Mr. Bernard that Mr. Adams had asked him for a thousand dollars.
[T-506] Q. That's clear in your mind? A. Yes, sir.

• • •

Testimony of Bernard C. St. Pierre

[T-1050] Q. Now, Mr. St. Pierre, you heard Mr. Wilcox testify from the witness stand here, have you not? A. Yes, sir.

Q. And I believe you also testified when he cross-examined you, when Mr. Hazouri put you on as an adverse party, I believe you testified that you accompanied, that you were with Deputy Joe Sardella when Mr. Wilcox made statements that Mr. Newcome has testified to? A. Yes, sir.

Q. Are you also familiar with the content, the statement made in the news articles about and quoting Mr. Wilcox?
[T-1051] A. Yes, sir.

Q. Now, these statements quoting Mr. Wilcox, including the statement that Bernard had reported to Wilcox that it would take a thousand dollars paid to Adams personally, that he was against having his firm involved in a payoff, but offered to let enforcement officers observe his foreman handing over marked bills and so on; now, were you present when—you were pre- [T-1051] sent with Mr. Sardella in-

Testimony of Bernard C. St. Pierre

terviewing Mr. Wilcox, did he make those statements? A. Yes, sir.

Q. You heard him yourself? A. Yes, sir.

• • •

Testimony of Joseph Sardella

[T-1104] Q. Mr. Sardella, you are the lieutenant and deputy sheriff who previously testified and was formerly a party in this case? A. Yes, sir.

Q. I remember asking you about your interview of Mr. Donald Wilcox, and you testified about that—— A. Yes, sir.

Q. —but I'm not sure I asked, and so I ask now, did you interview—incidentally, I believe you testified you were familiar with the news article quoting Wilcox, did you not?
[T-1104] A. Yes, sir, I read it here in the courtroom.

Q. And were the statements true and corect? A. Yes, sir, they were.

• • •

Testimony of Duke Newcome

[T-168] Q. In other words, he [Mr. Bernard] said he didn't tell Mr. Wilcox that Mr. Adams had tried to make a shakedown for a thousand dollars? A. That's correct.

Q. And he didn't—he denied that Mr. Adams approached Mr. Bernard about the mirrors and asked for the money back? A. That's correct.

Q. There wasn't any question about that denial, was there? A. No, sir.

• • •

[T-169] Q. When you talked to him and he said, "No," he made these denials, wasn't that pretty significant to you? A. Yes, sir.

Q. Did you feel that maybe it may be—might warrant another meeting with Mr. Bernard or another meeting with Mr. Wilcox to find out who was telling the truth? [T-170] A. No, I don't think it was up to me to continued meeting. I had statements from Mr. Wilcox that it had occurred. I had four from Mr. St. Pierre and Mr. Sardella, that he had told the same thing to them on separate occasions within the presence of two people. He confirmed it to me and then Bernard said it hadn't happened.

I think three people was sufficient to make me—plus it did, plus he was willing to go along with setting up a controlled payoff and I couldn't think of any reason why a man of Mr. Wilcox' position would be willing to go through all of the trouble of a controlled payoff if he didn't think it would happen.

• • •

[T-172] Q. Now, before you printed that article, you talked to Mr. Adams, didn't you? A. Yes, sir.

Q. And didn't he deny any such solicitation of a one thousand dollar bribe from Mr. Wilcox' foreman? A Yes, sir.

[T-173] Q. Didn't he deny that he had asked for his hundred and fifty dollars back after he paid for the mirrors? A. Yes, sir.

Testimony of Joseph Sardella

• • •

[T-394] Q. How about Mr. Wilcox' story about the mirrors; did he tell you that Mr. Bernard had told him that Mr. Adams had purchased the mirrors? A. Yes, sir.

Q. For a hundred and fifty dollars and wanted [T-395] them back, wanted a hundred and fifty dollars back? A. Yes, he had paid for the mirrors with a check for $150, returned the next day and asked him for the money back in cash.

Q. And he told you that? A. Yes, sir.

Q. No question in your mind about that? A. No, sir.

Q. Was Mr. St. Pierre present during this conversation, too? A. That was all the same conversation.

• • •

[T-1104] Q. Now, turn to this Roland Miller——

• • •

[T-1105] Q. You know who I mean? A. Yes, sir.

• • •

Q. All right, would you relate to the jury the substance of any interview you had with him prior to this publication of these articles? A. Yes, sir. I don't recall the date, but I contacted him along at his home, he was out in the yard working with a colored gentleman doing some type of work there, and when I arrived, he asked me to sit down in a lawn chair with him and he proceeded to tell me about Mr. Adams, that Mr. Adams had contacted him and had complained that he had been working overtime hours doing inspections on the John's Island building, [T-1105] and that Mr. Adams had asked him for a personal check in the amount of $2,000 for himself, and another check in the amount of $400 for his secretary, Mrs. Rymer.

Q. Did Mr. Miller tell you what his response to Mr. Adams was, what he said to him about this? A. Yes, sir. He said he refused to do that, and he in turn at a later date contacted the City Manager, Mr. DuMars.

[T-1106] Q. Did he state whether or not, did he tell you whether he told Mr. Adams what he thought about this request of his? A. Yes, he thought it was a shakedown in the form of a payoff.

• • •

[T-390] Q. Did you talk with Mr. Newcome at this time? A. Yes, sir, I did.

Q. And he gave you information about Mr. Adams? A. Yes, he gave me a list of names of people to contact that he had already contacted.

• • •

[T-391] Q. Did you dig up some other people's names in and of yourself? A. Yes, sir, I did.

Q. Did you get information from them? A. Yes, sir.

Q. Did you pass that on to Mr. Newcome? A. No, sir.

Q. You did not? A. I obtained a lot of information that Duke didn't find out and still doesn't know about.

• • •

Q. You didn't tell Newcome what Mr. Miller told you? A. No, sir.

[T-393] Q. Now, did you talk—do you recall talking to Roland Miller? A. Yes, sir.

Q. And is it your statement that Mr. Miller told you that Mr. Adams was trying to shake down the City of [T-394] Indian River Shares for unjustified pay for unjustified work? A. Yes, sir.

Q. He told you that? A. Yes, sir.

Q. Now, do you remember talking to Mr. Wilcox, did he tell you that Mr. Bernard, his employee, had told him that Mr. Adams had attempted to solicit a one thousand dollar bribe? A. Yes, sir.

Q. He told you that? A. Yes, sir.

Testimony of Connie Bishop

• • •

(Identified as TODAY news reporter employed by Vero Beach Press Journal at time of these events.)

[T-1015] Q. Do you know one Roland Miller, Mayor of Indian River Shores? A. Yes, I do.

Q. Did you take part in a conversation with a Mr. Roland Miller, Mayor of Indian River Shores, prior [T-1015] to the publication of these articles concerning Donald Adams in respect of the City of Indian River Shores? A. Yes, I did.

Q. Who was present at this conversation, and where was it? A. It was at the Patio Restaurant, and Roland Rogers,

a co-worker of mine at the Press Journal, and Mr. Miller.

Q. Does he still work for the Press Journal? A. Yes, he does.

Q. And you and he were in the Patio? A. Yes.

Q. And how did Mr. Roland Miller join this group? A. Well, Roland and I were just having lunch, and Mr. Miller came in and just stopped by us and talked and asked us if he could join us.

Q. Was anyone else present? A. Not at our table.

Q. What, if anything, did he say when he sat [T-1016] down? A. He was just damn mad about something.

Q. Was he visibly upset? A. Yes.

[T-1016] Q. And did he join you? A. Yes, he did.

Q. All right, and what was he talking about? A. He said he was mad at Donald Adams. He called him dirty names and everything.

Q. And what was this about, did he tell you? A. Yes, he talked more to Roland Rogers than he did to me, and he just said that, uh——

Q. Before he—let me ask you this: While he was talking with you and using this strong language, did he say anything about Mr. Adams? A. Yes.

Q. What did he say? A. He said, said that he was a, he was a son-of-a-bitch.

Q. Son-of-a-bitch. Did he say why? A. "He is trying to screw me up there," talking about Indian River Shores.

Q. Meaning Indian River Shores? A. Uh-huh.

Q. Did he use any other words to describe what [T-1017] he felt Mr.—what he said Mr. Adams was trying to do? A. I don't remember all of what he said. It's been so long I just remember the stronger things he said, but he was, he was trying to bribe him.

• • •

[T-1020] Q. State if you know whether the conversation concerned performance of duties of this nature? A. Oh, yes, it was, it was dealing with Indian River Shores and him as Building Inspector.

Q. How long before publication of the articles in question which were published in June of 1972, would that conversation have taken place? A. It's hard to say exactly. It was probably a month of two, maybe three, but I didn't have any reason to remember.

• • •

Q. And you remembered it [the June 11, 1972 article] in the newspaper, it tied together with the conversation that you related? A. We knew that he had said he was dissatisfied with Mr. Adams and accused him of wrongdoing, so it was nothing new to us, and that's why I remembered the conversation after that, and I mentioned it to Mr. Newcome.

• • •

CROSS-EXAMINATION

BY MR. HAZOURI:

[T-1023] Q. When did you have this conversation with Duke Newcome that you told him what you just told us today? A. It was sometime after a lot of the City, or some people went to the City Commission and some said he didn't say that, and I made a joke about it and said I know that he said it, because he said it to me.

• • •

Testimony of Duke Newcome

[T-1064] Q. What about Roland Miller and Indian River Shores, was Roland Miller—was that a relaxed conversation or just describes the way Roland Miller reported to you what you have printed here that he felt at the time that Mr. Adams was requiring payment, that he shouldn't? A. Mr. Miller was on and off; he laughed about it for a while, and then cussed for a while. He is the type of man, he is—said—he used a number of curse [T-1065] words and said that it wasn't right for him trying to shake them down.

Q. Did he used the word "payola"? A. He did.

Q. Did he say he had talked to Mr. Adams along that line? A. He said that Mr. Adams had approached him and asked for $2,000 for himself and $400 for his secretary per year for overtime work Indian River Shores was causing him.

He said, "I told him, 'Don, this is nothing but payola.'" [T-554] Q. No? So Mr. Sardella showed up at your garage one day? A. That's right.

Q. And did he tell you why he was there? A. Yes.

Q. Can you tell me what he told you? A. He told me he was investigating Don Adams.

Q. All right, sir, and did he discuss with you the question of this matter, which is of public record, this letter and contents? A. I told him that it was all on public record. [T-555] Q. Did you tell Mr. Sardella that Mr. Adams was trying to shake the City of Indian River Shores down for work that he wasn't—for money he wasn't entitled to? A. I did not.

Q. Did you tell him it was any form of payola? A. No, sir.

• • •

Testimony of Joseph Sardella

[T-395] Q. Okay. Now, did you introduce Mr. Newcome to Mr. DiBassie at the Big Daddy's Lounge? A. I don't believe so, but we did meet him there.

Q. Did you talk about Mr. Adams? A. Yes, sir.

Q. Did he say that Mr. Adams was a dishonest building inspector? A. Yes.

Q. He did? Okay, did he say that Mr. Adams took payoffs? A. No, he didn't say that, but he inferred it was a rotten business and these things happen.

Q. Was that conversation in the presence of Mr. St. Pierre, also, in addition to Mr. Newcome? [T-396] A. Well, all I can say, Mr. St. Pierre was there. I'm not sure that he was close enough that he heard the conversation. He was with us at that time.

Testimony of Joseph Sardella

Q. Three of you, plus Mr. DiBassie? A. Yes, sir.

Q. Did you make a statement that you were out to get Mr. Adams? [T-396] A. I did not make that statement.

Q. Did Mr. Newcome make that statement? A. I didn't hear it.

Q. Mr. St. Pierre? A. If he did, I didn't hear it.

Q. You are saying that you did not, and you don't remember if they did or not? A. Correct.

• • •

Testimony of Duke Newcome

[T-155] Q. Well, Mr. Newcome, you are familiar with the article which you did which is in evidence, " 'Rotten business' DiBassie charges"? A. Yes, sir.

• • •

[T-155] Q. Did Mr. Sardella introduce you to Mr. DiBassie? A. Yes, sir.

Q. And did Mr. Sardella tell you that Mr. DiBassie had indicated to him that he knew something about Mr. Adams, that he, that he might be willing to talk to you about? A. Yes, sir.

Q. And did you in fact talk to Mr. DiBassie? [T-156] A. To a limited degree. It was mostly a conversation between Mr. Sardella and Mr. DiBassie.

Q. But you were privy to the conversation? A. Yes, sir.

Q. And did Mr. DiBassie make any accusation about Mr. Adams and his Building Department? A. Not direct.

• • •

[T-1055] Q. Now, Mr. Newcome, you have on cross-examination when you were placed on the stand as an adverse party witness, when I had an opportunity to cross-examine you, I was permitted to ask you about the various subjects of these articles, and do you recall that? [T-1056] A. Yes, sir, some of it.

Q. Now, taking these subjects here very briefly and very

Testimony of Duke Newcome

quickly, Mr. Newcome, one by one here as to the statement by Mr. DiBassie, about contracting in the Vero area, "rotten"—excuse me—"goddamned business," would you repeat briefly your sources for that? Was that your—— [T-1056] A. Myself in the presence of Joe Sardella.

• • •

Testimony of Robert DiBassie

[T-568] Q. Have you had any reason to question his [Adams'] honesty and the way he handles himself in his business? A. No.

• • •

[T-568] Q. Had you contacted Mr. Sardella and asked to meet you and discuss anything about the Building Department? A. No, I didn't.

Q. Did you call Mr. Newcome and ask him to come discuss this? A. No.

Q. Have you contacted Mr. St. Pierre and asked [T-569] him to discuss with you problems about the Building Department? A. Definitely not.

Q. Now, Mr. DiBassie, did you have a discussion with them at the Big Daddy's Lounge on more than one occasion, or are we speaking primarily about one occasion? A. It may have been one, twice, three times; it definitely was more than one. I can't recall the exact number of times.

Q. Well, did you know Mr. Newcome was a newspaper reporter at that time? A. At the time I met him?

Q. Yes. A. Yes, I did.

Q. Did you have any friendship with Mr. Newcome? A. No, I don't.

Q. Did you know Mr. Sardella prior to meeting there or seeing you there at Big Daddy's? A. Yes.

[T-569] Q. Is he an acquaintance or friend? A. Acquaintance.

Q. Now, did Mr. Newcome begin to make inquiry of you about your knowledge of the Building Department here in Vero Beach? [T-570] A. Yes.

• • •

[T-570] Q. Will you tell me what Mr. Newcome was asking you and/or telling you during this conversation? A. It's been a long time, I can't recall exactly. Best of my recollection, uh, Mr. Newcome was conducting an investigation into the Building Department, and as I understand it, there turned up a number of things and they were going to take Don Adams to task and they asked me if I could contribute anything at that time.

I told them I did not want to be involved. I had very few dealings at that time with Don Adams as such as I was just—my only actual dealings with the Building Department at that time was driveways, patios, things of this nature, very minor.

Q. And did they—did Mr. Newcome elaborate or Mr. Sardella or Mr. St. Pierre elaborate on what they meant when they said, "taking to task"? [T-570] A. Well, yes, in a way. They said they were going to get him, they had some things on him, and put him in jail.

[T-571] Q. Well, now, did you encourage Mr. Newcome by giving him information against Mr. Adams? A. I wouldn't give him any information.

Q. Did you give him any information? A. No.

Q. Did you give Mr. Sardella any information or encourage him on information that would be detrimental to Mr. Adams? A. No, I didn't give any information. I said, "Fine, if he's on the take, getting money, go get him; you have my wholehearted support." Unfortunately, I couldn't give him anything.

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[T-573] Q. What I'm after, in discussing with you the fact that they were investigating Mr. Adams, did Mr. St. Pierre's problem with Mr. Adams come up in the discussion? A. Most definitely.

[T-575] Q. Now, did you in reference to Mr. Adams, did you ever make the statement to Mr. Newcome that the

Building Department of the City of Vero Beach was a—pardon my language—rotton god-damned business and he could put you out of business if you don't play the game, or something to that effect.

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[T-575] THE WITNESS: No, I did not make that statement.

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[T-577] Q. I believe you stated a moment ago that you never contacted Mr. St. Pierre about any problem that you yourself had or were having with the Building Department? A. No, sir, that's not true.

Q. I'm sorry, what is true about it? A. At the time that this arose, and I, after speaking to these gentlemen, meaning Mr. Newcome and Mr. Sardella, I at the time was having a conflict with the Building Department, mainly Don Adams, as in regards to a job I had on the beach and when these gentlemen had informed me that they had the goods on Don and would put him to jail or put him in jail or put him where he [T-577] belonged; my problem that I had at the time, I did call St. Pierre with it and told him what it was. I thought it was highly irregular; it's a situation that occurred.

Q. Situation that occurred to you? A. Yes, sir, and I did contact St. Pierre at that time.

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[T-578] Q. It is possible that your having seen these news articles and the fact that they concerned St. Pierre and that you had done, I presume, some subcontracting with him, knew it, that you might have called him as a result of seeing these articles to tell him that you also had had a problem or were having a problem with Mr. Adams? A. Yes, sir, that's possible. I don't recall the exact time.

Q. Is it possible that in this call you expresed sympathy toward Mr. St. Pierre? A. Most definitely.

Testimony of Robert DiBassie

Q. In the course of the time since then, have [T-579] you had occasion to make other complaints to the City concerning what you felt were improper treatment—what was improper treatment of you by Mr. Adams? A. Yes, sir.

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[T-580] Q. Did these include among other things putting undue pressure on some builders and not others? [T-581] A. I would say yes, definitely made the inference to that.

Q. You said that you remember a news article concerning Mr. St. Pierre's alleged Code violations; do you also remember that later he was—he found it necessary to file a suit to compel the Building Department to issue him the order to proceed with construction.

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[T-581] A. Yes, sir, yes, I was aware of that.

Q. You remember that was also reported in the newspapers? A. Yes, sir.

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[T-583] Q. And you are still in the masonry business? A. Never got out of it. I love it.

Q. So you still need Mr. Adams' permits? [T-583] A. Any place you go, you need permits.

Q. Would you agree with me, sir, to the basic proposition that a building department can put a contractor out of business? [T-584] A. No.

Q. You don't think that's true? A. No.

Q. You don't think there is enough leeway? A. I think when Bernie won his case in court and I think—I think the court—it showed you have regress (sic) through the court.

I don't feel that's true, no. They could make it difficult, but they couldn't put a man out of business.

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Testimony of Duke Newcome

Q. And you remember, to the best of your recollection, that you did not say to Mr. DiBassie that you were out to get Mr. Adams? A. That is correct.

Q. And put him in jail if possible? A. I remember no such statement.

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Testimony of Shirley Burnett

[T-904] Q. Did you have occasion to see him from time to time in Big Daddy's Lounge? A. Very frequent.

Q. During the period of time in the first half [T-905] say of the year 1972, was it Mr. DiBassie's custom to come into your lounge ond have a drink there?

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[T-905] A. Yes, sir.

Q. And what was the frequency and extent of your observations of this Mr. DiBassie, how often and how much did you see him? A. Uh, every Friday I would say. Sometimes on Tuesday afternoon, sometimes Thursday morning, very often he was in Big Daddy's Lounge.

Q. Mrs. Burnett, can you describe if you noticed any particular manner of speech or conducting himself of Mr. DiBassie?

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[T-906] Q. Did you have an opportunity to observe his use of language? A. Yes, sir.

Q. What was the extent of that opportunity that you had to observe his use of language? A. Well, he used a lot of obscene language in ordering drinks.

Q. First of all, did you have—how much observation did you have, how much opportunity or chance did you have to hear him talk? A. I hear everything that goes on in a bar.

Q. And you were going to say something about his language. A. Well, he used a lot of obscene words that I, I would not like to repeat here. If I have to, I will.

Q. I don't—state whether he characteristically spoke loud or soft in this connection? A. Very loud.

[T-907] Q. And used, he used a number of obscene words? I will ask you if among these words that he used was the word, excuse me for saying it, the word, "goddamn"? A. Yes, sir.

[T-907] Q. Now, Mrs. Burnett, have you heard him use those words? A. I have.

Q. On how many occasions, if you know? More than one? A. Yes, sir.

Q. Now, did you ever have an opportunity on occasions when the place wasn't so loud to observe him in conversations concerning his work and activities and his working in the masonry or whatever his business was in the City of Vero Beach? A. When?

Q. Yes or no, did you have an opportunity to hear him comment to the way it was working in Vero Beach? A. Yes, sir.

Q. And did you hear such comments from him on more than one occasion? A. Yes, sir.

Q. And would you please relate these comments and characterize them? [T-908] A. Uh, well, he said that he would get even with a lot of people. I didn't know the type of work he was in, but he said he wasn't going to kiss anybody's ass to build in Vero Beach, but he didn't intend to.

Q. In this connection, did you hear him talk about, talk of the building business in Vero Beach? A. Just to the fact that he didn't want to, that he wouldn't go along with certain people and I don't know names that he called, that he wouldn't go along with certain people on building in Vero Beach.

Q. Was that in the same conversation of kissing like you said? A. Yes, sir, right.

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Q. Ever work with the Building Department, City of Vero Beach? A. Yes, sir.

[T-1081] Q. Over what period of time? A. Uh, a year, from June, '73, to June, '74; it may have been May, but I think it was in June.

Q. Do you know a gentleman by the name of Bob DiBassie? A. Yes, sir.

Q. Was he one of the contractors that was in and out of the Building Department for permits and other things that contractors come into the Building Department for? A. Frequently.

Q. Were you receptionist at that time? A. Yes, sir.

Q. As receptionist, were you in a position to observe activities generally of the Building Department? [T-1082] A. Uh——

Q. People came in and left and so on? A. Yes, sir.

Q. Now, did you notice any difference, Miss Bosso, in the treatment of the Building Department of Mr. DiBassie, as compared to any other small contractors of generally similar activity?

[T-1082] Q. Yes, or no, did you notice? A. Yes.

Q. All right, what was it that you observed that caused you to give this—— A. Well, in my opinion——

Q. What did you observe? A. Mr. DiBassie would come in with a small plan, a garage, enclosure or something similar to this, small plans, not necessarily a house, and he would take it back to the office where the inspectors were to have them approve it immediately for us in the office, [T-1083] the girls, Mr. Heeley (phonetic) at the time, and Mr. Thomas now, I believe, to write the permit and have it out as soon as possible.

Q. Would he be able to get the permit quickly? A. Generally. Quicker than the others.

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(Identified as a newspaper editor employed with TODAY at time of publication of articles complained of.)

[T-988] Q. At that time, Mr. Reed, what experience, if any, had you had in investigative reporting? A. I had been in the newspaper business, at that time, about eight years and the bulk of that had been in investigative reporting.

Q. Were you called upon to—incidentally, where do you live, sir? A. I'm in Rochester, New York.

Q. All right, sir, prior to the publication of the articles that are the subject of this suit on June 11th, 1972, did you participate in staff meetings concerning these articles? [T-988] A. Yes, I did.

Q. And who was present at these meetings, sir? A. Duke Newcome, Buddy Baker, Bob Bentley, myself, and you, Mr. Holland.

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[T-990] Q. Did you, yourself, participate in these meetings that involved Mr. Newcome? A. Yes, I did.

Q. And did you ask questions relating to matters that you had noticed on these copies? A. Numerous questions.

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[T-991] Q. Mr. Reed, relate the nature of the checking and questions that you and the other staff members went through with Mr. Newcome in working on the preparation of these articles? What concerns, if any, did you express in these meetings? A. Well, the main thing that I expressed and goes along with all of the other stories that I do of this nature, is the correctness of the information and fairness to all parties.

Q. Among other things, did you, do you recall questioning Mr. Newcome about the statements and remarks made in the Big Daddy's bar by this gentleman who was erroneously called "Mr. LeBase"? A. I don't remember that, sir.

Q. Using copy there to refresh your recollection you go through and relate some of the items that you in particular went into and questioned Mr. Newcome on in these staff meetings. [T-992] A. Right. Some of this is strictly what you call editing and making it read smoother-type thing, where you change a word here and there.

Q. I'm not referring to that. [T-992] A. Right, and I have several times, to keep on here, I have written, "Did you get sworn statements from people?"

Q. All right, did you take that up with Mr. Newcome? A. Yes, I did.

Q. Did you discuss his stories with him about the particular things that you wrote about it? A. I didn't extensively. What I wanted to know, of course, "Duke, you say what happened, you know, and does anybody else say that? Who are your supporting witnesses?", this sort of thing, and now sworn statements, you either can or can't get them; it depends.

Most people are hard enough to get to saying something for a reporter. You have his statement, but wherever I put that, it's for corroborating evidence for your side, for correctness.

Q. In these discussions, did Mr. Newcome relate to you information about his sources? A. Yes, he did.

Q. And did you and others question him in detail [T-993] about that? A. For many hours.

Q. And did you make suggestions as to additional things he should do? A. Additional things he should do, and also things that should be deleted from the copy.

Q. Does the copy reflect that? A. I'm sure it does. Yes, particularly this one, I believe.

Q. A line all the way through a paragraph, that means some just taken out? A. Duke really didn't have any contact to go with the story, and they were deleted.

Q. And in these final meetings with all of these people together, did the staff reach a point of approval of the articles? A. Yes, that is correct.

Q. And what were your feelings at that time of the approval of these articles after full discussion as to the reliability of the information and its truthfulness? A. I was satisfied that the articles were accurate, fair, ready to be printed.

[T-993] Q. I'll ask you if you recall how many occasions Mr. Newcome was called upon to come up to—did these [T-994] meetings in Cocoa? A. Yes, they did.

Q. And can you state approximately how many times Mr. Newcome was required to come up to meet with you or other members of the staff about these articles? A. I remember two specific times when he met with at least four or five for long periods of time when we helped Duke and went over and over them. There were other times when Duke came up and talked to us about what was going on.

Q. Discussed the articles? A. Yes, that is correct.

Q. And I believe you already testified to that, that I was present as attorney? A. Right.

Q. And I'll ask you whether I also questioned Mr. Newcome about these articles and went into them? A. Very extensively.

Q. And whether after all these meetings and the review sessions, whether my approval as attorney was given? [T-994] A. Yes, we asked for it and you said, "Yes."

Q. All right, sir, and now was Mr. Bentley there? A. Yes, he was.

[T-995] Q. And what was his position with the newspaper? A. Bob Bentley was editor at the time, he was the top editor of the paper.

Q. And in the discussions concerning whether to keep or delete something, or to change something, who had the final word? A. Mr. Bentley.

Q. All right, sir, and who else participated? A. Buddy Baker, myself, you, Duke.

Q. Did I advise Mr. Bentley on those occasions? A. Yes, you did. I recognized his handwriting on this copy.

Q. Whose, Bentley's? A. Yes.

Q. Mr. Reed, did these copies here, are they the final form of the articles in question? A. No, sir.

[T-995] Q. Who at the news desk would do the final editing in this regard? A. Well, the editor, Mr. Bentley, would have final say-so. I take it the news editor, who was Mr. Edward Frank, was the last man that it went through on the desk as far as putting it into the paper.

Q. The final form, insofar as the substance of the final form, agree with the final product approved [T-996] at those staff meetings? A. That's correct.

Q. Now, you are presently engaged in investigative work? A. I'm chief of the investigative team for the Rochester newspapers.

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[T-996] Q. Mr. Reed, after this series of meetings, were you satisfied as to the extent of the investigation which led up and to the final product of these articles. A. Yes, sir, I was satisfied, or I would not have given my approval.

[T-996] Q. Did you seriously consider that question? A. Yes, sir. Yes, sir, I stake my reputation on it.

Q. Do you believe the final product of this story—you have stated that you believed it to be true, did you believe it to be fair and complete and accurate? [T-997] A. Yes, sir.

MR. HOLLAND: No further questions.

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CROSS-EXAMINATION BY COUNSEL FOR PLAINTIFF

[T-997] Now, Mr. Reed, tell us about your background in journalism. A. Graduated from the University of Florida

College of Journalism in 1965. I was named one of seven outstanding journalism students.

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[T-999] Q. So again, you had to rely solely on what Mr. Newcome told you; is that correct? A. And I believe also at the same time Mr. Sardella had some information.
[T-1006] Q. As to those matters in which you had, on which you had made these marks concerning sworn statements, would you relate what matters those were, sir, where you had questions perhaps of Mr. Newcome? A. Yes, sir.

Q. Starting with the first one, what was that? A. "Two electrical contractors told Today in the presence of witneses they have been loaning money for years to City Electrical Inspector Clyde Holtzclaw, an employee of Adams, to avoid harrassment from his department."

Q. Now, did you discuss this and the sources for this subject with Mr. Newcome? A. Yes, sir.

Q. Now, after your discussions, were you satisfied that he had sufficient sources to that statement? A. Yes, sir.

Q. Proceed on to the next case of what you wanted to check into in sources. Incidentally, among these discussions, do you recall Mr. Newcome reporting his interview with Holtzclaw himself about this matter? A. Yes.

Q. And that Holtzclaw admitted this? A. Yes.

[T-1007] "Sources told Today that Carl 'Speedy' Arnold, a foreman in the Water Department, stole City materials, worked private contracting jobs on city time, used city equipment and materials for private work, and that shortages in city materials were being concealed by the utilities distribution supervisor."

Q. Now, did you discuss sources on this part with Mr. Newcome? A. That is correct.

Q. And that you were satisfied with his sources? A. Yes, sir.

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[T-1078] "Question, you mentioned another letter concerning comments, I believe they were comments favorable to you in the contracting field?

Answer, No, I said a derogatory letter, derogatory letters.

Question, That you received?

Answer, Yes, sir, before this publication and after this [T-1079] publication."

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Testimony of William Hawkins

Q. All right, sir, before June of 1972, did you have knowledge of his reputation among such people, people in the trade, for his expertise and ability in the performance of his duties as a building official? A. Yes.

Q. And was that reputation good or bad? A. It was bad, I guess you would say.

Q. Do you have knowledge with respect to his reputation at that time for fairness in the performance of such duties, yes or no? Do you have knowledge of such reputation as to whether he was fair and consistent and evenhanded?

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Q. Do you have knowledge of this kind of reputation for his fairness in the performance of his duties? A. Yes, sir.

Q. And was that reputation good or bad? A. Well, I guess you would say it was bad.

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Testimony of Mr. Carl Hedin

[T-943] Q. At the time of the publication of these articles and before they were published, were you aware of

Mr. Adams' reputation among builders and in the building trade in the performance of his duties as Building Official? A. Yes, sir.

Q. And what was that: Good or bad? A. I would say bad.

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Testimony of C. Reed Knight

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[T-915] Q. Do you know the Plaintiff, you know the Plaintiff, Mr. Adams here? A. Yes, I do.

Q. Does your business include a packing house and quarters for people to live in and other types of construction matters? A. Yes, sir, it does.

Q. And in the course of your activities as you say as a farmer, have you had occasion to build numbers [T-916] of houses? A. Yes, I think possibly since the war, probably built near a hundred houses and duplexes.

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Q. All right, in your work and contracting work, have you had experiences with the Building Department in which the regulations were applied in ways that you yourself contested? A. Yes, in, I have in minor ways. It seems like is my argument, it seems like it used to be a dual regulation, but I was informed it was not a dual regulation, it was a dual enforcement, and I have to agree with that.

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[T-923] Q. In your work of your own places that you have had to build or tear down, have you been involved in controversy yourself with the Building Department? A. Yes, I have.

Q. And has it ever been necessary for you, yourself, to stand up for your own rights and question the Building Department? A. Yes, in one. In one instance, yes, sir, and then another instance I built buildings and put up my inspection card and it's never been inspected nor initialed or stamped.

Q. What was the instance where you did have [T-924] difficulty? A. Uh, let's see. One was where I was—some buildings were condemned, or the Building Department condemned some buildings as a fire hazard.

Q. And did you check that out to see whether or not they were fire hazards? A. Yes.

Q. Did you have the Fire Marshal—— [T-924] A. Yes, sir, the Fire Marshal checked it out, and there is no fire hazard.

Q. Did you tear them down? A. Not yet.

Q. How long ago was that? A. Possibly two years.

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[T-925] Q. Mr. Knight, prior to June of 1972, did you have knowledge of the reputation of Mr. Adams for fairness in the performance of his duties as Building Official, yes or no? A. Yes, I think that I have been there and——

Q. What was that reputation, good or bad? A. He didn't have a good reputation.

Q. Would you explain that, please, sir? A. Well, I think it's like a lot of enforcing officers, they can't carry a good reputation, maybe for the line of their duty, but his —he would pick up the biggest opposition, it would be that dual enforcement. It would run hot and cold. Today you would have to have so and so, and tomorrow you wouldn't have to have it.

Q. You refer that to dual enforcement? A. I would call it dual enforcement.

[T-925] Q. Is this between people as between types of enforcement? A. Is—state that again.

Testimony of C. Reed Knight

Q. As between builders and contractors, as well [T-926] as between enforcement at different times? A. Oh, yes, I would.

Q. Would this include conduct having the appearance of favoritism? A. It would have that appearance.

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Testimony of Robert E. Stone

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[T-601] Q. Now, you then approached this matter, would it be fair to say, strictly an attorney-client relationship, representing your client vis-a-vis City Prosecutor City Attorney and Building Inspector? A. I was representing Mr. St. Pierre on two matters: Criminal charges, and he wanted to continue that house.

Q. And that's how you got involved, that's the [T-602] way you approached it? A. Yes, sir.

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[T-609] Q. Now, was Mr. St. Pierre pretty upset about this whole matter? A. Yes, sir, I would say he was upset.

Q. Seemed to be getting pretty emotionally involved? A. I wouldn't say "emotionally involved." I think Mr. St. Pierre is a hardworking man, and he wanted to get that house built and that was his main concern and he was upset about it.

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[T-611] Q. Didn't Mr. Adams say yes, he could file an affidavit, but will he make it an unlimited protection or—— A. I don't think he said "unlimited." I think he said there couldn't be any time limit in the affidavit [T-612] itself. In other words, the affidavit couldn't pin it down to a period of years or a period of time.

Q. Didn't he want a density report, too? A. Not in connection with the affidavit. My understand was that if the affidavit was given, that it would hold the City free and

Testimony of Robert E. Stone

clear of any responsibility, and that Mr. St. Pierre would state in the affidavit that he had in fact compacted the soil underneath the slab and that he had in fact complied with the Southern Standard Building Code, that that would be acceptable and he could continue with the building.

Q. Could there have been a misunderstanding or ambiguity as to what was supposed to be furnished? A. My understanding was, the affidavit was all that was required.

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[T-614] Q. Okay, and then he did file the affidavit which you thought was sufficient; is that correct? A. Yes, sir.

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[T-614] Q. You did question, however, the fact that Mr. [T-615] Adams wanted the man to plead guilty on one of these charges before he could proceed building the house? A. I certainly did.

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[T-617] Q. The mandamus case was tried before the criminal case? A. No, sir, the criminal trial was first.

Q. That was the mandamus case that the tapes were put in evidence? [T-618] A. Yes.

Q. And became public records; is that correct? A. Correct.

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[T-618] Q. Did the charges of Code violations involve criminal punishment, possibility of fine or imprisonment? A. As I recall it, the Code provided that there could be a fine of $500 or sixty days in jail.

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[T-619] Q. As to the Code, Southern Standard Building Code, among other provisions, did it state that contractors convicted of violations would lose their license? A. The Southern Standard Building Code did not.

Q. But the municipal ordinance did? A. The municipal ordinance did, yes.

Q. Municipal ordinance of Vero Beach? A. Yes.

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[T-619] Q. Did you attempt to explain to Mr. Adams that the criminal case was one thing and the administrative problem of proceeding with the house was a separate [T-620] thing? A. Yes, sir, I discussed that with him, yes, sir, I did.

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Article from *Today* newspaper of Brevard County, Florida
Sunday June 11, 1972

'BLACKLISTED' VERO CONTRACTORS CLAIM SHAKEDOWNS, HARASSMENT

By Duke Newcome
TODAY Staff Writer

Vero Beach—In the building department of the City of Vero Beach, "You either play the game or you're out of business."

That's the way one local contractor laments what he calls "a rotten goddam business" involving allegations of shakedowns and harassment at City Hall.

Other allegations point to misfeasance in the City of Vero Beach water department.

• One contractor told TODAY that Donald F. Adams, director of the City-County Building Department attempted to shake his superintendent down for $1,000.

• The mayor of Indian River Shores told TODAY that Adams attempted to persuade the mayor to write a personal check to Adams each year for $2,000 and another for $400 to Adams' secretary for "extra work" which town building inspections caused Adams—work Adams was already being paid for.

• Two electrical contractors told TODAY in the presence of witnesses they have been "loaning" money for years to City Electrical Inspector Clyde Holtzclaw, an employee of Adams, to avoid harassment from his department. One said the inspector also has taken material from his business, without paying for it, and used the material on a private job.

Top city officials have long been aware of problems within various departments but little remedial action has been taken.

TODAY advised a Vero Beach city councilman and the city manager one year ago of alleged use of city materials on private jobs by city superintendent of Water Distribution Carl "Speedy" Arnold.

John DuMars, city manager and Alfred Fletcher, city councilman, were given names of persons who reportedly witnessed Arnold taking city-owned materials for use on private jobs Arnold had contracted. A memo to Arnold's boss, Frank Phillips, cautioning against this practice and urging tighter inventory control was the only action today.

TODAY's investigation began approximately one year ago following a grand jury's report of irregularities within the city electric department. This led to alleged irregularities in the city building and water departments.

Sources told TODAY that Arnold, a superintendent in the water department, took city materials, worked private contracting jobs on city time, used city equipment and materials for private work, and that shortages in city materials were being concealed by the utilities distribution superintendent.

TODAY took its information to City Manager DuMars and asked for an investigation.

The result was a strongly-worded memorandum from DuMars to Utilities Distribution Superintendent Frank

Phillips reminding him that the superintendent (Arnold) was instructed several years ago to perform no contractual work within the city limits of Vero Beach or outside the city when it involved the city water system. The memorandum stated it would be better for all concerned if Arnold refrained from all contractual work.

He also ordered steps taken to tighten control of city materials.

Arnold has been seen by city employees using secondhand materials, such as pipes and fittings, on private jobs, materials which were dug up from city streets amd ordinarily returned to the city's supply shop, witnesses say. Arnold denied this when confronted by TODAY.

In addition to reports of the use of city equipment and materials, a memo from the city manager indicatted suspicion that private contractors were "borrowing" city materials that were not being returned.

Joe Conway, then warehouseman for the city, told TODAY that Frank Phillips, utilities distribution superintendent, furnished him with job numbers of city projects completed earlier to which he was instructed to charge off missing material.

Phillips told TODAY it was customary to adjust some inventory but he does not remember instructing Conway to charge off missing material.

Louis Dellerman, of Ace Plumbing Co., told TODAY that in recent years, he has lost approximately 20 jobs to Arnold, who submitted lower bids.

On several occasions, Dellerman said Arnold has attempted to sell him new and used pipe, lead and gate valves, which the plumber refused to purchase. Arnold denied the allegation.

Karl Hedin, general contractor, told TODAY he independently hired a consulting engineer about two years ago to draw plans for a sewer main on a project at 935 East Causeway Blvd.

Upon completion of the job, Hedin was advised by the engineer, James Beindorf, that a pressure test must be made on the pipe. The engineer contacted Arnold to make the test.

Hedin said Arnold and John Sellers, now manager of water and sewage systems, worked several nights making the test, using a piece of equipment Arnold had loaded on his jeep, which Hedin said Arnold told him was city equipment.

The contractor said he was billed by Beindorf for $225 for the test. The bill for payment was marked, in parentheses, as payment to Carl Arnold.

Sellers told TODAY he worked with Arnold two nights on the project but no city equipment was used.

Arnold first denied he worked on the project then said he "helped run it down." He denied using any city equipment and said he was on city time and was paid overtime by the city, receiving no money from Hedin.

Reminded by Sellers, who was present for the interview, that he was not on city time, Arnold recalled receiving $12.50 for the work. He remembered the money was paid to Sellers and Sellers paid Arnold.

A copy of the bill for the work shows Beindorf billed Hedin for the pressure tests. The bill shows payment to Carl Arnold of $225 for pressure tests on the sewer line.

'Rotten Business,' LeBase Charges

Bob LeBase, Vero Beach drywall contractor, describes construction work as "a rotten goddamn business."

City building inspectors can put a man out of business if they wish, the contractor said.

Don Wilcox, executive vice president and project director for the Village Spires Condominium on the beach, told TODAY that Donald F. Adams, city-county building and zoning director of Vero Beach, attempted a $1,000 shakedown on one of Wilcox' projects.

Wilcox said Adams frequently criticized minor items in the Village Spires project, including a demand to replace all the doors.

Adams insisted fire rated doors were required inside the two buildings, which would have cost an additional $30,000. Wilcox said he argued Adams' interpretation of the code was incorrect and that inside doors did not have to be fire rated.

Wilcox walked away from Adams, but quoted his foreman, Art Bernard, as saying he asked Adams what they would have to do to keep the project moving.

Bernard told Wilcox it would take $1,000 paid to Adams personally, Wilcox told TODAY.

Wilcox said he was against his firm becoming involved in a payoff and offered to let law enforcement officers observe his foreman handing over marked bills to the city official for the purpose of making an arrest. However, his superiors and attorneys preferred not to be associated with any possible bad publicity.

The contractor said he checked with officials in major Florida cities and with the Southern Standard Building Code Congress in Alabama and confirmed his interpretation that fire rated doors were not required inside the building.

Adams denied all Wilcox' accusations.

The building official said he had no discussion of money with Bernard, who confirmed Adams' statement.

Adams said he never asked for nor was offered money and resented the implication.

He said he frequently held up the Village Spires project for things he found wrong. Bernard confirmed this saying Adams had required "one step above" standard requirements in the building.

Adams said he obtained the interpretation from the Southern Standard Building Code Congress which showed he was corect in his interpretation. However, the letter from the congress disclosed he had authority to allow non-fire rated doors. He said he did allow this "at no cost."

On another recent occasion Wilcox said Adams expressed interest in three smoked mirrors in the Village Spires. Adams inquired as to the cost and was told by Bernard the contractor paid $150 and if Adams wanted them he could purchase them at that price.

Adams gave a personal check for $150 to Bernard and took the mirrors. The next day he returned and told Bernard he wanted his $150 refunded in cash. He did not return the mirrors.

Bernard gave Adams the $150, according to Wilcox.

Adams admitted purchasing the mirrors from Bernard with a personal check but denied he returned the next day for his money to be refunded in cash. Bernard confirmed Adams' statement.

A letter on file in the city hall shows Adams approached the mayor of Indian River Shores several months ago asking that $2,000 be paid to Adams and $400 to his secretary every year.

Adams told Mayor Roland Miller the large amount of construction in the town at John's Island Development was

causing both him and his secretary a lot of overtime work. He offered to furnish Miller a letter explaining the extra work and justifying the payment.

Adams' salary of $15,110 a year is paid by the city and county to cover work throughout the county. In addition, residents or contractors of Indian River Shores pay the City of Vero Beach for each inspection made there.

Last year total payments reached about $16,000. This year the payments are expected to total about $25,000.

The town council of Indian River Shores balked at Adams' request for funds and Mayor Miller wrote Vero Beach City Manager DuMors saying if the city decided overtime payment was warranted he would submit that to his council.

Adams denied to TODAY that he approached Mayor Miller directly for the money. He said he went through DuMars, in writing, with his request.

Adams said Miller called him and informed him of a pending meeting of the town council and suggested if he had anything to bring before the council he could do so at the meeting.

Adams said the City of Vero Beach is not being reimbursed "one dime" for enforcement of zoning there, which Adams is responsible for. He said he told Miller he thought it only fair if the town put something in its budget for Adams.

Adams said DuMars read the letter and told him it appeared Adams was asking for a personal reimbursement. He said he rewrote the letter and a copy was sent by DuMars to Miller.

Adams said he later learned Miller "went around telling people I was putting a gun to his head," to get the money.

'Favoritism', Hawkins Claims

William Hawkins, owner of Hawkins Plumbing Co., accuses Adams of showing favoritism to certain Vero Beach contractors.

Hawkins told TODAY he visited a construction site at 14th Avenue and 16th Street owned by Frank Zorc and noticed P.V.C. (plastic) pipe was being used for plumbing in the multi-unit building. The use of plastic pipe was a violation of the city building code.

Hawkins said he questioned City Plumbing Inspector Oscar Teat to learn if the building code had been changed to allow the P.V.C. Teat said it had not, according to Hawkins, and he had rejected the Zorc Building because of the pipe. Teat said Adams had given his personal approval of the Zorc project, Hawkins quoted the inspector.

Hawkins said he inquired of Adams who said there had been a misunderstanding. Hawkins proceeded to install plumbing in two more buildings he had contracted, using cast iron and copper, believing something would be done to correct the Zorc building.

He said he later checked the building again and found walls being erected with the plastic pipe still in place.

Hawkins then installed P.V.C. in his next job and the project was rejected by Teat. Hawkins said he asked for a personal inspection by Adams, who also rejected the project and ordered the plastic pipe removed.

Hawkins said he refused and told the city official he would remove his plastic pipe when that same material was removed from the Zorc Building. He said he asked Adams why he permitted its use by Zorc and was told that was between Adams and Zorc.

Hawkins said his project was approved by Adams after several days delay. The building code has since been changed to permit P.V.C.

Adams recalled his confrontation with Hawkins and said the plumber was attempting deliberately to force him into a showdown.

He explained he approved the Zorc building because he had recently attended a meeting of the Southern Standard Building Code Congress and learned changes in the code were planned, including the use of P.V.C.

He said he rejected Hawkins' building because the plumber had used P.V.C. also beneath the slab. The Zorc building plumbing had cast iron beneath the slab, Adams said.

later he told TODAY he approved Hawkins' building because he decided to allow all plumbers to use P.V.C. as Hawkins had done.

Adams said it is a customary procedure of his to permit such changes but when he does he makes the change effective for all contractors.

Louis Dellerman, owner of Ace Plumbing, Inc., also opposed Adams allowing Zorc to use the P.V.C.

Dellerman told TODAY the City Examining Board, of which he is a member, accepted P.V.C. for use in the city more than a year ago. Adams, however, is the final authority on what is allowed, Dellerman said.

When Dellerman learned of the P.V.C. in the Zorc Building, he said he, as a member of the examining board, instructed Adams not to give final inspection on the project. The plumber said he was told sharply by Adams he had nothing to do with such inspections and the project was approved.

Some Builders Laud Adams

Many area contractors say they have experienced no difficulty with Adams or his inspectors. Some commend the official as being thorough in his inspections and say he requires quality building.

Others maintain Adams has a different building code or set of rules for different contractors.

Bernie St. Pierre, a Vero Beach contractor for 12 years, complains he must pour a continuous footer around all his buildings. This is not a requirement for all contractors, he said.

St. Pierre also said he is the only contractor in the city required to install 20-foot culverts beneath driveways to homes he builds.

Most contractors use pipe in 14-foot lengths, at a cost of $3.31 per foot.

St. Pierre's claim is supported by C. G. "Doc" Edwards, owner of King's Ideal Supply, who stocks the metal culverts. Edwards said St. Pierre is the only one to his knowledge that purchases the extra length pipe.

St. Pierre said he installed three 14-foot pipes at driveways on 28th Avenue where he was building homes before he was ordered by the city to begin using 20-foot lengths.

He said he questioned city employee Don Smoke at the site why others were permitted to use the shorter, cheaper pipe and was advised if he complained to higher city officials he would be forced to tear out the first three he had installed.

Edwards said two homes were already built in the 28th Avenue Subdivision by other contractors where St. Pierre built new houses. Their driveway entrances blocked the flow of surface water when the development was completed

and they were required to install culverts. They were permitted to use 14-foot lengths.

J. Lewis Green, director of the city Public Works Department, denied he has any such requirements for culvert installation. He told TODAY his department encourages everyone to use a culvert of sufficient length to avoid a vehicle driving off the end into the swale ditch.

He said he would not try to impose two standards on contractors.

2 Contractors Tell of 'Loans'

Paying off building inspection officials is not an uncommon practice in many cities, contractors say, but it failed to serve any purpose for two Vero Beach contractors.

Hans Barker, co-owner of Indian River Electric Co., said he has been "loaning" money to City Electrical Inspector Clyde Holtzclaw for years, without being repaid, and is still being harassed on his jobs.

Holtzclaw, who worked for Barker as an electrician prior to joining the city about six years ago, approached Barker for a loan of $175 shortly after starting work with the city.

Barker said he gave the inspector the money not asking that it be repaid and not expecting it to be. Later Holtzclaw borrowed another $125, which Barker asked to be returned. He said it was repaid.

Since that time, the inspector "borrowed" smaller amounts, ranging from $20 to $50.

Barker said when he gave the inspector the money he did so believing it was a payoff to keep Holtzclaw from giving him trouble on the job. The inspector never offered to return any of the borrowed money but continued coming back for more, Barker said.

In recent months, Barker said Holtzclaw began harassment on jobs by Barker's firm, which Barker said he believes was an attempt to make future "loans" more easy to obtain, using the harassment as an example of what could take place.

The action has an opposite effect on Barker, who said he shut off the loans March 23. Since then, Barker said his partner and co-owner, Paul Wright, who does most of the house wiring, experienced a sharp increase in the inspector's harassment on jobs.

Wright told TODAY he also "loaned" money to Holtzclaw when he operated Anchor Electric Co. prior to forming a partnership with Barker.

Wright said he loaned money to the inspector several times over a period of years, in amounts ranging from $5 to $75, and was repaid only once.

In addition, Wright said Holtzclaw moonlighted (worked private jobs after city working hours) for some time after joining the city. He said Holtzclaw would come to his shop and pick up electrical supplies, such as wiring, to install on the private jobs, never offering to pay for the material.

Holtzclaw admitted borrowing money from Barker, Wright and Jackson Electric Co. and White Electric Co.

He said he had paid back a portion of the money he borrowed from Barker but could not recall if he had repaid Wright. He denied he ever moonlighted or took material from Wright, other than a light bulb or some small item for his personal use.

Some Can Snub Building Rules

Some contractors are permitted to ignore city building department rules while others must follow a strict set of regulations. Wright said he has had jobs rejected because the weatherhead, or connection point where electric wires

enter a building, was not high off the ground. A house now under construction on Bethel Isle has a weatherhead that can be reached from the ground. The house is being wired by Jackson Electric Co. Holtzclaw could not recall giving such approval.

It is a violation of the city building code to install an electric panel in any closet, Wright said, but a house being built by Contractor Frank Zorc at 1082 27th Ave., has such panel in a bedroom closet. The wiring job was approved by Holtzclaw May 14.

Holtzclaw said he did approve the project because the closet was large, had no shelves and he felt the panel was safer there than over a bed or where children could reach it. He said he has authority to do this under the building code.

A wiring job by Wright at 1776 40th Ave. was rejected by Holtzclaw because the panel was located directly above a washing machine location, a violation of city rules.

Wright said Holtzclaw approved the job after the inspector talked with Gayland Reed of Reed Construction Co., contractor on the project. Holtzclaw told TODAY he approved the job after Reed agreed to move the washing machine connection. He admitted he was given a load of cement blocks by Reed. The inspector said the blocks had the corners chipped.

Russell Burks, contractor, hired a non-licensed electrician to wire a house he was building on 25th Avenue but the wiring job, which Wright described as "a hell of a mess," was rejected by Holtzclaw.

Wright was asked to correct the faulty wiring and get it approved. He said he was permitted by Holtzclaw to take out a permit in his name, as a licensed electrician. He made no changes in the writing but the project was then approved

by the inspector Holtzclaw and the faulty wiring was covered by installation of walls and ceilings.

Holtzclaw told TODAY he did approve the job later but said the wiring had been changed to conform with the code.

Wright, who said he is a personal friend of Donald F. Adams, City-County Building Department Director and Holtclaw's immediate supervisor, knows of Holtzclaw's activities.

Wright said he personally told Adams that Holtzclaw is getting anything he wants from the contractors.

Adams told TODAY he had heard accusations that Holtzclaw had accepted money for permits which he brought to city hall for the customers. He said he ordered that practice stopped.

He said he heard Holtzclaw was accepting loans from contractors and reported the information to City Manager DuMars. Adams said he also ordered Holtzclaw to stop making the loans because it looked bad for the department.

Adams said his orders to Holtzclaw were given several months ago, prior to the date Barker said he refused further loans to the inspector.

ADAMS: PAYOFFS YES— BUT NONE IN VERO

By Duke Newcome
TODAY Staff Writer

Vero Beach—Donald F. Adams is the first to admit that payoffs to city and county building officials is a common practice in the state, but adds quickly, it isn't happening in Vero Beach.

The target of many such charges, Adams says bluntly: "I have the cleanest department in the entire state."

Now into his fifth year as director of the City-County Building Department, the accusations from contractors disturb him, but he maintains he is in the right and plans to continue demanding quality building.

Both Adams and his department have come under fire in a current investigation by TODAY which has produced accusations of improprieties.

These include the alleged attempted shakedowns of contractors, loans solicited by a building department official and favoritism shown to some contractors.

Adams believes TODAY is being used by special interests and suggests if corruption in building departments is of special interest, other cities should be investigated.

Of the many accusations filed with TODAY against him, Adams denies he was involved in any wrongdoing. He cited each case in which he was accused of allowing one contractor to perform acts he had refused others as being his privilege under the building code.

The city building code, an adaptation of the Southern Standard Building Code used throughout the South, specifies materials to be used in all instances of construction, but permits the building official to allow an alternate that is of equal or better quality.

In cases where he has deviated from the code, Adams said he is justified by allowing other contractors to use the newly approved materials in future construction.

He admits he is a strict enforcer of the building code, an opinion all contractors contacted by TODAY share, but he denies he shows favoritism.

"I've been called a 'smart ass' and told I'm arrogant," the 46-year-old official says, "but I don't mean to be. That's just my way of expressing myself. It's what God gave me."

Adams, who earns $15,110 a year total salary from both the city and county, says he knows the construction business.

He was a carpenter for several years, then became "a small time" general contractor 15 years ago. He never made it "big" as a contractor, "not from lack of brains" but from lack of money, he explains.

Rumors that he "lives high" are just false rumors, he says.

He purchased a condominium apartment in Vista Harbors, 2800 Indian River Blvd. for $14,400, according to records, carrying a mortgage of $11,350.

Contrary to reports he paid cash for a new Cadillac last year, Adams says he financed the $7,200 car through Florida First National Bank in Vero Beach after Indian River Citrus Bank refused the financing.

Rumors that his wife took two European vacations in the last two years are also incorrect, Adams says. She did make one trip to Europe but that on a budget allowance.

The city official claims he has nothing to fear and nothing to hide. Although he is not happy to learn of problems in his department, he is at least pleased they have come to his attention.

"We are definitely going to folow up on it," Adams says in reference to the information TODAY uncovered. "I will talk with the people involved and there will be some housecleaning. Something will be done by the turn of next week," he says.

THIS CONTRACTOR BEAT CITY HALL

By Duke Newcome
TODAY Staff Writer

Vero Beach—Contractor Bernie St. Pierre has no quarrel with city building department inspectors for their thoroughness in inspections. But he fought back, alone in battle, against what he called coercion and lies.

St. Pierre, who has constructed 200 homes in the area, won the first round in his fight with city hall last month when he was found innocent by a six-member jury in Municipal Court of three violations of city ordinances.

The contractor, angered over what he called harassment by the city, ignored a stop work order issued by Building Department Director Donald F. Adams.

Last week he won another major victory in Circuit Court after Adams gave conflicting testimony on the witness stand.

St. Pierre won approval from circuit court to continue building a structure when testimony was given that Adams presented different accounts of his dealing with St. Pierre, both under oath.

A telephone conversation April 7 between Adams and St. Pierre's attorney, Robert Stone, was tape-recorded by Sheriff's Investigator Sgt. Joe J. Sardella, who told the court he was assigned by the sheriff to investigate possible coercion ond extortion in the conflict.

The recording, made without Adam's knowledge, was played in court for Judge Wallace Sample during a hearing on a writ of mandamus St. Pierre was seeking to allow him to continue building.

The recording disclosed that Adams told Stone he was satisfied that St. Pierre had compaction on the soil beneath the slab of the home he was building.

Adams also told Stone during the conversation he intended to make an example of St. Pierre, that he would not let the contractor off "scott free," that he was establishing a precedent in the case and that the only way St. Pierre could continue work on the building was to plead guilty to the misdemeanor charges Adams had filed against him.

In a deposition taken last month, two days after St. Pierre's victory in municipal court, Adams said under oath he had never made such statements.

St. Pierre testified he asked Adams what he must do to continue building and was informed he could file an affidavit with Adams showing the contractor would assume full responsibility in the event the slab settled, causing the building walls to crack.

He said he furnished that affidavit, but Adams refused to permit continuation of construction, demanding that a soil compaction test be taken from the garage area of the house, where the slab had not yet been poured, to show the soil was compacted.

St. Pierre said he furnished the compaction test but Adams still refused to permit construction.